

RESPONSE TO COMMENTS FOR NPDES PERMIT WA-0000892 (Issued June 16, 2011)

KAISER ALUMINUM FABRICATED PRODUCTS, LLC

The Department received written comments and public hearing testimony on the proposed permit from the Permittee and the following Indian Tribes, Agencies and Individuals:

List of Tribal Respondents
Spokane Tribe of Indians (ST)
List of Agency/Municipal/Governmental Respondents
Environmental Protection Agency (EPA)
U.S. Congresswoman Cathy McMorris Rodgers (PT)
List of Organizational Respondents
Avista Utilities (AV)
Lake Spokane Association (LSA)
Sierra Club (SC)
Spokane Riverkeeper (SR)
Lands Council (SR)
Kootenai Environmental Alliance (SR)
Gonzaga University, Legal Assistance Environmental Law Clinic (SR)
Nine Individual Respondents (C, PT)

Table 1 and 2 below summarizes the changes Ecology made to the permit based on the public comments and testimonies. The remaining pages contain the written comments and public hearing transcript along with Ecology's response to each comment. Ecology considered these comments and made changes in the final permit as determined appropriate.

In addition, Ecology made the following changes to the final permit and fact sheet:

- Ecology updated the table on page 17 of the fact sheet listing the schedule of actions during managed implementation plan to reflect the issuance date of the permit.
- Ecology discovered a calculation error in the end-of-pipe metals limits for cadmium and lead. The calculations used incorrect values for translating a dissolved metal water quality criteria into a total metals permit limit. Ecology included the revised spreadsheet (Appendix D) in the final fact sheet, and incorporated the revised limits in the final permit. Using the correct metal translator values resulted in slightly higher permits limits for cadmium and lead.
- Ecology also discovered a typographical error in the zinc average monthly limit of 73 µg/L in the draft permit. The final permit contains a corrected value of 75 µg/L.
- After the close of the public comment period, Ecology had further conversations with the US EPA, Spokane Tribe of Indians and the Permittee regarding PCBs discharged to the Spokane River. The parties agreed on an additional condition in the final permit which requires the Permittee to participate in the creation of a Regional Toxics Task Force for the Spokane River. The Task Force will develop a comprehensive plan with the goal of bringing the Spokane River into compliance with applicable water quality standards for PCBs. Ecology will include this condition in other NPDES permits issued on the Spokane River (City of Spokane, Liberty Lake Sewer and Water District, Inland Empire Paper Company, and the proposed permit for Spokane County).

Table 1 - Summary of Permit Condition Modifications Based on Public Comments

Proposed Permit	Final Permit	Applicable Comments	Reason
Continuous temperature monitoring at internal Outfalls 002 and 006	No continuous temperature monitoring at internal Outfalls 002 and 006	K-7	With the continuous temperature monitoring at final Outfall 001, Ecology agrees that the continuous monitoring requirement at the internal Outfalls is not necessary.
Continuous pH monitoring at internal Outfalls 002 and 006	No continuous pH monitoring at internal Outfalls 002 and 006	K-8	With the continuous pH monitoring at final Outfall 001, Ecology agrees that the continuous monitoring requirement at the internal Outfalls is not necessary.

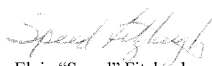
Table 2 - Summary of Permit Language Modifications Based on Public Comments

Permit Condition	Modification	Applicable Comments	Reason
Conditions S2.C required the frequency of flow meter calibrations “shall be in conformance with manufacturer’s recommendations and at a minimum frequency of at least one calibration per year...”.	Requires the frequency of flow meter calibrations “shall be in conformance with manufacturer’s recommendations” and deleted the minimum calibration frequency of once per year.	K-14	The facility’s magnetic flow meters are factory calibrated and cannot be calibrated in the field. A minimum yearly calibration frequency would have required the Permittee to remove the flow meters from service for return to the factory for calibration.
Condition S.3, Reporting Requirements	Ecology has added language to Condition S3.A requiring the permittee to submit PCB analytical test results within 15 days after receipt of the laboratory results.	K-13	Due to long turnaround times when testing for PCBs at low detection levels, the Permittee may be unable to submit results by the 15 th day of the following month.
Condition S.4, Total Phosphorus, CBOD, and Ammonia BMP Plan	Added ‘...maintain <i>or lower</i> effluent concentrations...’.	AV-1	The goal of the BMP plan would include lowering, in addition to maintaining, effluent concentrations of these pollutants
Condition S.5, Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, footnote b	Clarified compliance schedule language to include references to pollutant trading consistent with the Water Quality Trading Framework, implementation of a multi-facility ‘bubble limit’ concept, and extension of the critical season into January and February.	AV-4, K-12, PH-8, SR-12, SR-19	Ecology updated the language to include current delta elimination/trading/effluent limit topics currently being discussed by Stakeholders and Spokane River DO TMDL Implementation Committee.
Condition S.5, Schedule of Compliance for Total Phosphorus, CBOD, and Ammonia, footnote f	Added a statement that any revisions to WQBELs must ensure the DO responsibility for Avista remains unchanged.	AV-2	Ecology acknowledges that any revisions to WQBELs must not shift any further DO responsibility to Avista.
References to ‘Delta Management’	Changed to ‘Delta Elimination’	EPA-3	Ecology wished to remain consistent with the Foundational Concepts document, which used the term ‘Delta Elimination’.

Permit Condition	Modification	Applicable Comments	Reason
Condition S.6 Black Walnut Shell Filtration Loading	<p>Changed title to 'Black Walnut Shell Filtration Loading/PCB Source Identification and Reduction'.</p> <p>Incorporated by reference the 2004 Agreed Order for PCB source identification and reduction.</p> <p>Added a statement that the goal of the PCB source identification and reduction work is to reduce PCBs in the effluent to the maximum extent practicable to bring the Spokane River into compliance with applicable water quality standards for PCBs.</p>	C-3, C-12, LS-4, PH-7, PH-8, PH-15, PH-26, SC-2, SC-5, ST-1, ST-10, ST-11, ST-12, ST-14, SR-1, SR-3, SR-5, SR-6, SR-16, SR-18	Ecology added and incorporated by reference the 2004 Agreed Order to make the Public aware of the Permittee's PCB source identification and control responsibilities. Ecology added the goal of this work is to reduce PCBs in the effluent to the maximum extent practicable to bring the Spokane River into compliance with applicable water quality standards for PCBs.

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<div data-bbox="842 305 995 342" data-label="Image"> </div> <p data-bbox="218 396 365 415">November 17, 2010</p> <p data-bbox="218 440 487 524">Permit Coordinator Washington Department of Ecology 4601 N. Monroe Street Spokane, WA 99205</p> <p data-bbox="218 545 924 605">Re: Comments on Draft NPDES Permits Regarding the Spokane River for Inland Empire Paper Company, Kaiser Aluminum, Liberty Lake Sewer and Water District, and the City of Spokane Riverside Park Facility</p> <p data-bbox="218 626 348 646">Dear Sir/Madam:</p> <p data-bbox="218 667 936 771">I am writing to provide comments on the draft NPDES permits for the following facilities discharging to the Spokane River: Inland Empire Paper Company (Permit No. WA-000082-5); Kaiser Aluminum (Permit No. WA-000089-2); Liberty Lake Sewer and Water District (Permit No. WA-0045144); and the City of Spokane Riverside Park Water Reclamation Facility and Combined Sewer Overflows (Permit No. WA-002447-3).</p> <p data-bbox="117 862 170 881">AV-1</p> <p data-bbox="218 792 930 940">1. In the Inland Empire and Kaiser permits, please revise the first sentence in Condition S4 to read as follows: "The goal of this BMP plan is to reduce effluent concentrations of total phosphorus, CBOD, and ammonia below current discharge levels." The current language indicates that maintaining effluent concentrations at current discharge levels would satisfy the goal of the BMP plan. For the same reason, on page 17 of the Inland Empire Factsheet draft permit, the second full sentence should be revised to state that "The goal of the BMP plan is to lower these pollutants in the effluent"</p> <p data-bbox="117 1062 170 1081">AV-2</p> <p data-bbox="218 963 930 1153">2. Condition S5 in the Inland Empire and Kaiser permits includes a table of target pursuit actions and compliance dates. The final target pursuit action, "Meet Final Water Quality Based Effluent Limits," has a footnote stating that Ecology "may adjust the final water quality based effluent limitations on the basis of new information," including "the results of the Avista Dissolved Oxygen Water Quality Attainment Plan." Avista assumes that any adjustment made to the final effluent limits would be to make the limits more stringent, because adjusting the limits to make them less stringent would be prohibited by the anti-backsliding provision of the Clean Water Act. Is our assumption correct? Otherwise, we are concerned that any adjustment could place an additional burden on Avista.</p> <p data-bbox="117 1187 170 1206">AV-3</p> <p data-bbox="218 1175 915 1218">3. The permits for Kaiser and Inland Empire set effluent limits based on "seasonal averages," but do not explain how a seasonal average is to be calculated. Please explain.</p> <p data-bbox="117 1281 170 1300">AV-4</p> <p data-bbox="218 1239 930 1343">4. None of the permits refer to the Water Quality Trading Framework that Ecology is preparing (although the Liberty Lake and City of Spokane permits at least mention the concept of trading -- see Condition S11.A in the Liberty Lake permit and S15.A in the City of Spokane permit, which state that: "The Engineering Report is to address the following topics based on rule requirements, pollutant equivalency consideration, potential for offset creation and</p> <p data-bbox="165 1349 365 1391">1411 East Mission Avenue PO Box 3727 Spokane, Washington 99220-3727</p> <p data-bbox="825 1362 963 1391">800.227.9187 www.avistautilities.com</p>	<p data-bbox="1062 248 2001 444">AV-1. Restated, Ecology intended the BMP plans to maintain effluent concentrations at current discharge levels. However, Ecology expects successful implementation of a BMP plan would reduce effluent concentration of these pollutants. Therefore, Ecology has changed the language in the final permits as follows: "The goal of this BMP plan is to maintain or reduce effluent concentrations of total phosphorus, CBOD, and ammonia".</p> <p data-bbox="1062 472 1980 737">AV-2. Depending on the circumstances, the final water quality based effluent limits may move up or down. Exceptions to anti-backsliding provisions allow for changes that result in less stringent effluent limits, based on new information. Ecology, in making changes to WLAs, will make certain the resultant dissolved oxygen depletion matches those in the approved TMDL. Ecology has also added language to the compliance schedule stating less stringent effluent limitations "must ensure the dissolved oxygen responsibility for Avista identified in Table 7 of the DO TMDL remains unchanged."</p> <p data-bbox="1062 764 2001 927">AV-3. Ecology mistakenly did not include a 'seasonal average' definition in either the permit or fact sheet. A discharge would calculate a seasonal average by summing all daily discharges of phosphorus measured during the March to October time period divided by the number of daily discharges measured during the same time period.</p> <p data-bbox="1062 954 2001 1252">AV-4. Ecology has clarified the delta elimination language in the final permit to include items addressed in our current draft trading framework and incorporation of a possible multi-facility bubble limitation. Until we complete this framework, the permits can only provide future opportunities to make use of results from both the trading frame work and recommendations from the Spokane River DO TMDL Implementation Advisory Committee. Ecology believes the engineering report is an appropriate tool for presenting exact details of how individual dischargers propose to use the trading framework individually or collectively.</p>

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<p><i>Permit Coordinator Department of Ecology November 17, 2010 Page 2</i></p> <p>AV-4 (con'd) management including trading, etc."). Each of the draft permits should be revised to explicitly allow dischargers to use credits created under the Trading Framework to help meet water quality based effluent limits.</p> <p>5. We have several questions regarding offsets and offset plans:</p> <p>AV-5 (a) Why do the draft NPDES permits and factsheets for the City of Spokane and Liberty Lake contain provisions regarding offsets and offset plans, but the draft NPDES permits and factsheets for IEP and Kaiser do not?</p> <p>(b) Please explain how an offset plan (as that term is used in the draft permits and factsheets for City of Spokane and Liberty Lake) relates to the Trading Framework.</p> <p>(c) Please explain how an offset plan (as that term is used in the draft permits and factsheets for City of Spokane and Liberty Lake) relates to the Delta Elimination Plan.</p> <p>(d) The draft permits and factsheets for both the City of Spokane and Liberty Lake state that "Offset Plan: Not a requirement in the proposed permit. In the next permit cycle it is anticipated that an Offset Plan will be required." See p. 32 of the City of Spokane factsheet and p. 26 of the Liberty Lake factsheet. However, p. 35 of the City of Spokane factsheet indicates that the permittee is required to submit its initial Annual Offset Plan Update in February, 2013. Because the draft permit will not expire until 2015, does that not make the submission of the initial Annual Offset Plan Update a requirement of this permit? Also, why is Liberty Lake not required to submit its initial Annual Offset Plan Update by the same date?</p> <p>6. In the City of Spokane permit, footnote 6 to the S2 Monitoring Requirements states as follows:</p> <p>Beginning March 1, 2018; for the 3 parameters (CBODs, NH₃ and TP) with WLAs established by the Spokane River and Lake Spokane DO TMDL, the monthly discharge monitoring report must provide the following information for the "ten year assessment" monitoring and future compliance projections: monthly average, daily maximum, running total for the "season," running average for the "season," projected trend of total lbs. and average concentration and average daily lbs. for remainder of the "season" with future compliance target indicated. If the trend projection indicates a probability of noncompliance with the allowable mass limitations to be in effect once the period of formal compliance begins in 2021, the permittee is to communicate the anticipated result of the projection to the Department with appropriate recommendations.</p> <p>Regarding this language, please change "probability of noncompliance" to "significant potential for noncompliance," and at the end of the last sentence add "to avoid a trend that would result in noncompliance." "Probability of noncompliance" at least suggests that the City of Spokane need not report unless the likelihood of noncompliance exceeds 50 percent, a standard inconsistent with the Clean Water Act. Please also define "season" for purposes of this footnote, since that term refers to at least three different time spans elsewhere in the City of Spokane draft permit.</p>	<p>AV-5. In this permit, Ecology wished to remain consistent with the Foundational Concepts document. This document referred to 'delta' as the gap between the level technology would achieve and the final water quality based effluent limit (WQBEL). 'Delta elimination' would include any measures that eliminate the delta, allowing the facility to meet their final WQBEL.</p> <p>At present, delta elimination may include re-use of effluent, consideration of biological available phosphorus, approved trades consistent with the Water Quality Trading Framework developed by Ecology and the DO TMDL Implementation Advisory Committee, pollutant equivalency, and implementation of a 'bubble limit' concept for interested dischargers.</p>

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<p><i>Permit Coordinator Department of Ecology November 17, 2010 Page 3</i></p> <p>See, e.g., page 8 of draft permit, where there is reference to the “season” of March 1 to May 31, the “season” of June 1 to September 30, and the “season” of October 1 to October 31.</p> <p>AV-6 7. The factsheets for Kaiser Aluminum (page 18) and Inland Empire Paper Company (page 13) contain a table labeled “NPDES Permit Cycle.” The table includes Avista, despite the fact that it is not subject to an NPDES permit. Furthermore, the table incorrectly characterizes Avista’s implementation schedule under its Section 401 Certification.</p> <p>To avoid confusion and to make Avista’s implementation schedule consistent with its Section 401 Certification, please remove Avista from the table and include immediately below the table the following narrative summary of Avista’s schedule:</p> <p>Avista’s Lake Spokane Dissolved Oxygen Water Quality Attainment Plan (DO WQAP) will be submitted to Ecology for review and approval by May 27, 2012. Avista must also submit the DO WQAP to the Federal Energy Regulatory Commission (FERC) for approval, and cannot proceed with any mitigation/implementation activities identified in the DO WQAP until it receives FERC approval. The DO WQAP will contain a compliance schedule for implementation that to the degree reasonable and feasible is synchronized with the milestones and assessments of the DO TMDL for the Spokane River, but does not exceed ten years (WAC 173-201A-510(5)). If at the end of the ten year compliance period, Avista is unable to address its proportional level of responsibility as determined in the DO TMDL, after evaluating and implementing all reasonable and feasible alternatives under WAC 173-201A-510(5)(g), then Avista will propose an alternative action to achieve compliance with the DO TMDL, such as new reasonable and feasible technologies or other options to achieve compliance with the DO TMDL, a new compliance schedule, or other alternatives as allowed by WAC173-201A-510(5)(g).</p> <p>Please also explain why Avista’s DO WQAP is referenced in the Kaiser and IEP factsheets, but not in the factsheets for Liberty Lake Sewer and Water District or for the City of Spokane.</p> <p>We appreciate your consideration of our comments. Please feel free to call me at (509) 495-4998 if you have any questions.</p> <p>Very truly yours,</p>  <p>Elvin “Speed” Fitzhugh Spokane River License Manager</p>	<p>AV-6. Ecology intended the ‘NPDES Permit Cycle’ heading as a timeline in 5 year increments, not to mean Avista had an NPDES permit.</p> <p>AV-7. Ecology borrowed this table from the final Spokane River DO TMDL, Table 10 on page 74. The submittal dates appearing in the fact sheet differ slight from those in the TMDL for Avista’s Water Quality Attainment Plan and subsequent compliance items. Accordingly, Ecology has changed these dates to in the final fact sheet to match those in the final TMDL.</p>

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<p>Joy, Shara-Li (ECY)</p> <hr/> <p>From: Darrell, Ginny (ECY) Sent: Monday, November 22, 2010 11:50 AM To: Joy, Shara-Li (ECY) Subject: FW: NPDES for Spokane River</p> <p>This was in my Inbox - please include in the Spokane River permit comments.</p> <p>- Ginny</p> <p>-----Original Message----- From: FRANK I BACKUS [mailto:frankbackus@comcast.net] Sent: Wednesday, November 17, 2010 8:40 AM To: Darrell, Ginny (ECY) Cc: Puddicombe seablues Subject: NPDES for Spokane River</p> <p>C-1 The Department of Ecology must ensure that NPDES permits include effluent limits for PCBs, ammonia, phosphorus, temperature, dioxin, CBOD, and other parameters that will be protective of Washington's and the Spokane Tribe's water quality standards. The proposal as it is does not protect enough.</p> <p>As a physician, I want to emphasize the importance to the people of Spokane and all of the Pacific NW to have safe waters. And remember that the Spokane River does drain into Puget Sound, which is in need of much lower and safer levels of toxins and effluents. Do the right thing!</p> <p>C-2 I support the limits suggested by the Sierra Club. All permits need to be based on the CeQual model for establishing critical river conditions for permit limit calculations in the river during the 1-in-10 year flow year of 2001. All permits must use end-of-pipe water</p> <p>C-3 quality-based limits for PCB until a TMDL assigns a WLA in an approved TMDL. NPDES permits should not use technology-based limits or BMPs. Critical river conditions for all permittees must be based on the 2001 parameters estimated from the 2001 calibrated CeQual model for the segment at the discharge point. Those WQ conditions are the best estimate of critical</p> <p>C-4 parameters present during a 1 in 10 year flow condition at that location. Kaiser needs separately monitor PCBs in the process stream and groundwater to prevent dilution and to</p> <p>C-5 provide more reliable results. The Liberty Lake design criteria (as with Spokane's) have not been confirmed to be able to achieve WQ criteria at design flow or to comply with Tier 2 Antidegradation requirements. Although there were known WQ problems with discharge expansion several years ago, the expansion was approved anyway. Liberty Lake should receive interim performance-based limits to prevent further degradation of the Spokane River and Lake Spokane until such time as DO TMDL implementation demonstrates improvements in water quality.</p> <p>C-6 Pollutants in the waste stream and listed in the 303(d) list such as PCBs must have limits in the permit. If there is no WLA for the discharge in an approved TMDL, then there is no</p> <p>C-7 allowable mixing zone - and end-of-pipe WQ-based limits must be applied. WQ-based arsenic</p> <p>C-8 limits now need to be implemented after more than 10 years of delay. Final limits for oxygen demanding pollutants must be placed in the permit and the compliance schedule cannot exceed 5</p> <p>C-9 years in the permit. Any interim limits and compliance schedule exceeding the 5-year maximum permit life must be contained in an administrative order. Because implementation of the metals TMDL has been delayed excessively, the metals limits should use end-of-pipe limits as interim until a year of monitoring establishes performance. At that point, most stringent of either performance-based or end-of-pipe limits should become automatically effective per the procedure outlined in the metals TMDL. Fecal coliforms are common in undisinfected pulp mill effluent along with opportunistic pathogens. Permit limits consistent with meeting water</p>	<p>C-1. Ecology believes the final permit includes all limitations necessary to protect receiving water quality criteria.</p> <p>C-2. Critical flows used to set permit limits varied by the pollutant. Ecology used the 1 in 10 low flow of year 2001 to set water quality based limits for phosphorus, CBOD, and ammonia to protect receiving water dissolved oxygen criteria. For other parameters, Ecology determines compliance with aquatic life criteria using the 7Q10 river flow (7 day low flow with a reoccurrence probability of 10 years); human health criteria using the 30Q5 river low flow (30 day low flow with a reoccurrence probability of 5 years); and human health carcinogen criteria using the harmonic mean river flow.</p> <p>C-3. Ecology will not include an end-of-pipe limit for PCBs in this permit. The permit includes a PCB limit on the inlet side of the black walnut shell (BWS) treatment system. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p> <p>C-4. See response to C-2.</p> <p>C-5. Kaiser measures PCBs at their final discharge point (Outfall 001). This outfall includes both process/non-contact cooling water (Outfall 006) and a ground water remediation flows. Kaiser uses an ultra low level analytical method that routinely detects PCBs at Outfall 001. This method provides reliable PCB results for the combined waste streams.</p> <p>C-6. See response to comment C-3.</p> <p>C-7. Based on permit application testing, arsenic is not present in the discharge. There is no reasonable potential for this discharge to cause or contribute to arsenic water quality exceedences in the receiving water.</p> <p>-continued on next page-</p>

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<p>quality criteria for bacteria must be placed in the permit until quantification of pathogens in IEP effluent is performed by an independent health organization. Pulp mill effluent has been well-documented to cause endocrine disruption in fish including rainbow trout, impairing reproductive and other physiological processes. Because a unique native Red- Band Trout population naturally reproduces in the river near the IEP discharge, it is imperative that the effluent not limit this population's recovery which is also being limited by other water pollution and habitat problems. Exposure to pulp mill phytosterols and other chemicals potentially responsible for endocrine disruption may occur for extended periods since it is likely that the warm IEP discharge creates an attractant to fish when the river is coldest in the winter. This pollution impact from IEP discharges must be shown not to cause any toxic effects in the Red-Band Trout population. Tier 2 Antidegradation rules must be complied with for new or expanded discharges. There is neither an adequate nor up-to-date evaluation accompanying the newly expanded design flow being permitted. Ecology has a state of art model with extensive instream monitoring calibration data for the critical river condition year of 2001. There is no need to delay permit analyses since all receiving stream parameters used for calculating effluent limits within mixing zones for all Spokane River permits should use the model WQ output data for the river segment at each outfall. It is arbitrary to use data from one sampling effort in 1998 or the non-critical flow year of 2005 to characterize the river for 2010 permits.</p> <p>Frank I. Backus, MD 12737 - 20th Avenue NE Seattle, WA 98125-4118 (206) 365-3348 frankbackus@comcast.net</p>	<p>C-10. Tier 2 Antidegradation requirements apply to new or expanded actions that result in a measurable decrease in receiving water quality. Kaiser has not proposed any new or expanded actions that fall under the Tier 2 Antidegradation requirements.</p> <p>However, the facility must comply with Tier 1 Antidegradation requirements. Tier 1 ensures existing dischargers maintain and protect the designated uses of the receiving water. Ecology believes the conditions in this permit will protect existing and designated uses of the receiving water. Additionally, the permit takes appropriate and definitive steps to bring the water quality back into compliance with the water quality standards for dissolved oxygen and PCBs.</p> <p>C-11. See response to comment C-2.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>Joy, Shara-Li (ECY)</p> <hr/> <p>From: Angie Dierdorff [angie@sunpeopledrygoods.com] Sent: Monday, November 08, 2010 5:19 PM To: Joy, Shara-Li (ECY) Subject: draft permit updates</p> <p>C-12 I am writing to implore The Washington State DOE to limit PCB levels in the Spokane River in the draft permit updates!</p> <p>I have been concerned about PCB levels in the Spokane River since 2000, when the levels came to my attention and that of People for Environmental Action and Community Health, of which I was a founder.</p> <p>The City of Spokane's Riverside Park Water Reclamation Facility, Inland Empire Paper, Kaiser Aluminum, and the Liberty Lake Sewer and Water District are all significant sources of PCBs. Ecology has a draft PCB cleanup plan that indicates that standards for PCBs in the Spokane River are not being met. The four aforementioned pollution sources contribute to the problem. Drastic reductions in PCBs are required to meet these standards (more than 90% reduction). PCBs are contaminating our fish and beaches throughout the river.</p> <p>C-13</p> <p>Please do not miss this opportunity to include PCB limits in the draft permits.</p> <p>Thank you,</p> <p>Angie Dierdorff Sun People Dry Goods Co. 24 W. 2nd Ave, Suite 200 Spokane, WA 99201 509-869-9438 (mobile) angie@sunpeopledrygoods.com www.sunpeopledrygoods.com Subscribe to our enewsletter</p>	<p>C-12. See response to comment C-3. The permit includes a PCB limit on the inlet side of the black walnut shell (BWS) treatment system. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p> <p>C-13. See response to comment C-3.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>Joy, Shara-Li (ECY)</p> <hr/> <p>From: Ken Carmichael [kcarmichael2225@gmail.com] Sent: Monday, November 15, 2010 9:13 AM To: Joy, Shara-Li (ECY) Subject: Water discharge permits on Spokane River</p> <p>I am not a water quality expert nor do I fully understand all of the technical aspects surrounding cleaning up the Spokane River and Lake Spokane. I am a resident that uses the lake frequently and am very familiar with the quality of the water during the summer. I have attended several public meetings on the issue.</p> <p>I recognize that there is a high cost and several technical hurdles to go over in order for us to make significant improvement to the quality of the water. However, with all this said I believe that it is essential for the good of the river and the community as a whole that every conceivable effort be made to maximize our efforts to clean up these waters.</p> <p>C-14 The reason this has become so expensive is that we have already let it go too long. In the past using the water way as a means of disposal was less expensive and convenient. Now we must pay the price for our past. I believe that we have no choice for our own economic, social and environmental well being but to expect the absolute best efforts to clean up the water.</p> <p>This effort should not be allowed to be delayed, regardless of the cost. Those who have benefited must now step forward and pay the price.</p> <p>Ken Carmichael 466-2225</p>	<p>C-14. Ecology believes improvements in water quality will occur relatively quickly coinciding with the installation and operation of treatment technology for phosphorus, ammonia, and CBOD reduction. This will occur at the end of this 5 year permit cycle.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="233 337 317 412" data-label="Image"> </div> <div data-bbox="390 332 812 401" data-label="Text"> <p>UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 10 1200 Sixth Avenue Seattle, WA 98101</p> </div> <div data-bbox="226 431 371 469" data-label="Text"> <p>Reply to Attn of: OWW-130</p> </div> <div data-bbox="543 446 699 469" data-label="Text"> <p>November 16, 2010</p> </div> <div data-bbox="226 487 674 511" data-label="Section-Header"> <p>CERTIFIED MAIL - RETURN RECEIPT REQUESTED</p> </div> <div data-bbox="226 527 533 673" data-label="Text"> <p>Mr. James Bellatty Section Manager Water Quality Program Washington State Department of Ecology Eastern Regional Office North 4601 Monroe Spokane, Washington 99205-1295</p> </div> <div data-bbox="226 690 884 774" data-label="Text"> <p>Re: EPA review of Draft NPDES Permits for the City of Spokane Riverside Park Water Reclamation Facility #WA-002447-3, the Liberty Lake Sewer and Water District #WA-004514-4, Inland Empire Paper Company #WA-000082-5, and Kaiser Aluminum Fabricated Products LLC #WA-000089-2</p> </div> <div data-bbox="226 790 367 815" data-label="Text"> <p>Dear Mr. Bellatty:</p> </div> <div data-bbox="226 831 890 896" data-label="Text"> <p>EPA has reviewed the most recent versions of the draft National Pollutant Discharge Elimination System (NPDES) permits for the facilities mentioned above. Below are our comments on the draft permits:</p> </div> <div data-bbox="226 912 852 958" data-label="Section-Header"> <p><u>City of Spokane Riverside Park Water Reclamation Facility and Spokane County (Pretreatment Program) #WA-002447-3</u></p> </div> <div data-bbox="226 974 291 997" data-label="Text"> <p>Permit:</p> </div> <div data-bbox="226 1015 905 1101" data-label="Text"> <p>S1.A <u>Interim Effluent Limitations</u> and S1.B <u>Effluent Limitations for Compliance</u>: It appears that the 85 percent removal requirement for TSS was inadvertently left out of the permit. TSS limits in the permit are technology based and must include the secondary treatment requirement for 85 percent removal.</p> </div> <div data-bbox="226 1115 594 1141" data-label="Section-Header"> <p><u>Inland Empire Paper Company #WA-000082-5</u></p> </div> <div data-bbox="226 1157 291 1180" data-label="Text"> <p>Permit:</p> </div> <div data-bbox="226 1196 825 1242" data-label="Text"> <p>S5. SCHEDULE OF COMPLIANCE FOR TOTAL PHOSPHORUS, CBOD AND AMMONIA, Footnote f., Page 16:</p> </div> <div data-bbox="226 1258 892 1304" data-label="Text"> <p>The final permit must contain WQBELs consistent with the approved Wasteload Allocations (WLAs) for parameters identified in the "Spokane River and Lake Spokane Dissolved Oxygen</p> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM

RESPONSES

Total Maximum Daily Load Water Quality Improvement Report" (also known as the Spokane River dissolved oxygen TMDL) as required in 40 CFR 122.44(d)(1)(vii)(B). There appears to be a cut-and-paste error. The final limits appearing in the permit are based on WLAs for Kaiser Aluminum rather than Inland Empire Paper, as follows:

^f The Waste Load Allocations for ammonia, total phosphorus, and CBOD are 9.0, 3.21, and 462.7 lbs/day seasonal average from March to October, respectively (0.07, 0.025, and 3.6 mg/L, respectively, at a discharge flow of 15.4 mgd). The final WQBELs are shown below:

FINAL WATER QUALITY BASED EFFLUENT LIMITATIONS: OUTFALL # 001 March through October	
Parameter	Season Average
Ammonia, lbs/day	9.0
Total Phosphorus, lbs/day	3.21
CBOD, lbs/day	462.7

The final limits must be based on TMDL WLAs for Inland Empire Paper, as follows:

^f The Waste Load Allocations for ammonia, total phosphorus, and CBOD are 24.29, 1.23, and 123.2 lbs/day seasonal average from March to October, respectively (0.71, 0.036, and 3.6 mg/L, respectively, at a discharge flow of 4.1 mgd). The final WQBELs are shown below:

FINAL WATER QUALITY BASED EFFLUENT LIMITATIONS: OUTFALL # 001 March through October	
Parameter	Season Average
Ammonia, lbs/day	24.29
Total Phosphorus, lbs/day	1.23
CBOD, lbs/day	123.2

Inland Empire Paper Company #WA-000082-5 and Kaiser Aluminum Fabricated Products LLC #WA-000089-2

EPA-1

Both permits include typographical errors in Condition S5, Footnote a, on Page 15 of the Inland Empire Paper permit and Page 16 of the Kaiser Aluminum permit. Footnote a in each permit says, "The report shall also include an assessment on the progress of meeting the final **waste** quality based effluent limits (WQBELs) through the combination of treatment technology and delta elimination." The condition should say "...**water** quality based effluent limits..."

General comment

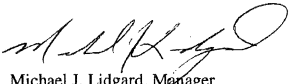
EPA-2

EPA recommends that the permits use consistent language regarding offsets or delta management. The industrial permits refer to "delta elimination" or "delta management" whereas the municipal permits refer to "offsets." "Offset" is the term that's used in the Washington water quality standards.

Page 2 of 3

EPA-1. Ecology has corrected these errors in the final permit.

EPA-2. In this permit, Ecology wished to remain consistent with the Foundational Concepts document. This document referred to 'delta' as the gap between the level technology would achieve and the final water quality based effluent limit (WQBEL). 'Delta elimination' would include any measures that eliminate the delta, allowing the facility to meet their final WQBEL.

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>EPA would like to acknowledge the hard work over the past few years by your WQ Permit Unit staff in reaching this milestone. We appreciate the efforts to work collaboratively with EPA staff on earlier versions of these permits, and we look forward to final permit issuance. If you have any questions regarding these comments, please contact Lisa Olson at (206) 553-0176 or Brian Nickel at (206) 553-6251.</p> <p>Sincerely,</p>  <p>Michael J. Lidgard, Manager NPDES Permits Unit</p> <p>cc: Kelly Susewind, Water Quality Program Manager, Ecology, Olympia Virginia Darrell, WQ Permit Unit Supervisor, Ecology, Eastern Regional Office Richard Koch, WQ Permit Manager, Ecology, Eastern Regional Office Pat Hallinan, WQ Permit Manager, Ecology, Eastern Regional Office</p> <p><i>Page 3 of 3</i></p>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p style="text-align: center;">Comments on Draft NPDES Permit No.WA0000892</p> <p>Issue – Failure to Comply with Applicable Requirements</p> <p>In the draft permit, Ecology repeatedly fails to comply with the requirements of 40CFR 122.45(h) which states:</p> <p>(h)<i>Internal waste streams.</i> (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by §122.48 shall also be applied to the internal waste streams.</p> <p>(2) Limits on internal waste streams will be imposed only when the fact sheet under §124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.</p> <p>In addition, in the draft permit fact sheet, Ecology repeatedly fails to comply with the requirements of 40CFR 124.56(b)(1)(ii) which states:</p> <p>NPDES fact sheets shall contain the following:</p> <p>(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:</p> <p>(ii) Limitations on internal waste streams under §122.45(h) of this chapter;</p> <p><u>Comment</u></p> <p>With respect to newly created internal Outfall 006, located at the discharge of the Black Walnut Shell Filter (BWSF) System, Ecology does not set forth in the fact sheet the exceptional circumstances which make the limitations imposed at internal Outfall 006 necessary. While Kaiser understands Ecology's concerns that at final Outfall 001, which contains the process related waste water from internal Outfall 006 and ground water related to site remediation activities from internal Outfall 007, that the discharge is so diluted as to make monitoring impracticable, Ecology is required to provide the explanation for such limitations being necessary in the fact sheet.</p> <p>Kaiser Aluminum Fabricated Products, LLC Comments on Draft NPDES Permit No.WA0000892 November 15, 2010 Page 1 of 6</p>	<p>K-1. Ecology set limits on internal waste streams for Outfalls 002 (industrial waste treatment), 003 (sanitary waste treatment), and 006 (black walnut shell filtration system). These limits implement and verify the AKART requirement for these waste treatment systems, regardless of the location of the discharge.</p> <p>State rules in WAC 173-220-210(c) allows Ecology to specify monitoring at internal waste streams to verify ‘...that proper waste treatment or control practices are being maintained...’. For this facility, ‘proper waste treatment’ means operating and meeting separate permit limits for the industrial and sanitary waste treatment plants, and BWS filtration system.</p> <p>Additionally, large volumes of cooling water and groundwater dilute both the sanitary and industrial waste streams prior to final discharge to the river. Pollutants in the intake water also contribute to oil and grease, TSS, aluminum, chromium, and zinc concentrations in the final effluent. The dilution, coupled with the variability of flows and concentrations in intake and cooling water, and groundwater sources, makes determining the true characteristics of each waste stream impossible, unless monitored separately.</p> <p>K-2. See response to comment K-1.</p> <p>K-3. See response to comment K-1.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p><u>Comment</u></p> <p>K-4 With respect to existing internal Outfall 002, located at the discharge of the Industrial Water Treatment Plant, there are no exceptional circumstances which make the establishment of internal limitations necessary. The draft permit establishes limitations at internal Outfall 002 for six parameters (Total Chromium, Cyanide, Total Zinc, Total Aluminum, Oil & Grease, and Total Suspended Solids). The draft permit establishes limitations at Internal Outfall 006, which is located downstream of internal Outfall 002 (with additional treatment systems in between) for five of the six parameters for which limitations were established at internal Outfall 002. These parameters are Total Chromium, Cyanide, Total Aluminum, Oil & Grease, and Total Suspended Solids. For Total Zinc, an effluent limitation is established at final Outfall 001, which is even farther downstream than Outfall 006. Based upon the establishment of limitations downstream of internal Outfall 002 at internal Outfall 006 and at final Outfall 001 for the same parameters for which limitations are proposed for internal Outfall 002, Ecology has failed to meet the test of impracticability and infeasibility required for establishment of limitations at internal Outfall 002. In addition, no environmental purpose is served by imposing limitations and monitoring requirements at an intermediate step in that facility's treatment system train. As a result, all effluent limitations and their corresponding monitoring and reporting requirements should be removed from the permit for internal Outfall 002.</p> <p>K-5</p> <p><u>Issue – Monitoring Requirements for Temperature at Internal Outfalls</u></p> <p>Ecology has proposed monitoring requirements for temperature at internal outfalls for which monitoring requirements have been established at the final discharge point, Outfall 001.</p> <p><u>Comment</u></p> <p>K-6 Ecology has proposed continuous monitoring requirements for temperature at internal Outfall 002 (Industrial Wastewater Treatment) and internal Outfall 006 (Black Walnut Shell Filter System Discharge). In the Fact Sheet, Ecology references WAC 173-220-210 and 40 CFR 122.41 as the authority to require monitoring, recording, and reporting. WAC 173-220-210(1)(c) states in part that, "Monitoring of... internal waste streams... may be required... to verify that proper waste treatment or control practices are being maintained...". There are no waste treatment or control practices related to temperature associated with internal Outfall 002 or internal Outfall 006 that need to be maintained. In addition, the permit proposes that temperature is continuously monitored at the final discharge point, Outfall 001. The imposition of continuous temperature monitoring requirements at internal outfalls, while imposing a continuous temperature monitoring requirement at the final discharge point, is unjustifiable</p> <p>K-7</p> <p>Kaiser Aluminum Fabricated Products, LLC Comments on Draft NPDES Permit No.WA0000892 November 15, 2010 Page 2 of 6</p>	<p>K-4. See response to comment K-1.</p> <p>K-5. Ecology disagrees. The monitoring and limits at Outfall 002 serve to verify and implement the 'all known, available and reasonable methods of prevention control and treatment' requirement for the industrial waste treatment system. See response to comment K-1.</p> <p>K-6. Comment noted.</p> <p>K-7. Ecology agrees and has omitted temperature monitoring at internal Outfalls 002 and 006 in the final permit.</p>


COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>K-7 (con'd) under WAC 173-220-210 and serves no environmental protection purpose. As a result, temperature monitoring and reporting requirements should be removed from the permit for internal Outfall 002 and 006.</p> <p>Issue – Monitoring Requirements for pH at Internal Outfalls</p> <p>Ecology has proposed monitoring and reporting requirements for pH at internal outfalls for which limitations, monitoring, and reporting requirements have been established at the final discharge point, Outfall 001.</p> <p><u>Comment</u></p> <p>Ecology has proposed a continuous monitoring requirement for pH at internal Outfall 006 (Black Walnut Shell Filter System Discharge). In the Fact Sheet, Ecology references WAC 173-220-210 and 40 CFR 122.41 as the authority to require monitoring, recording, and reporting. WAC 173-220-210(1)(c) states in part that, "Monitoring of... internal waste streams... may be required... to verify that proper waste treatment or control practices are being maintained...". There are no waste treatment or control practices related to pH associated with internal Outfall 006, following other internal outfall that are located upstream that need to be maintained. In addition, the permit imposes a pH limitation, a continuous monitoring obligation, and reporting requirements at the final discharge point, Outfall 001. The imposition of a continuous pH monitoring requirement at internal Outfall 006, while imposing a continuous pH monitoring requirement at the final discharge point, is unjustifiable under WAC 173-220-210 and serves no environmental protection purpose. As a result, pH monitoring and reporting requirements should be removed from the permit for internal Outfall 006.</p> <p><u>Comment</u></p> <p>Ecology has proposed continuous monitoring requirements for pH at internal Outfall 002 (Industrial Wastewater Treatment). In the Fact Sheet, Ecology references WAC 173-220-210 and 40 CFR 122.41 as the authority to require monitoring, recording, and reporting. WAC 173-220-210(1)(c) states in part that, "Monitoring of... internal waste streams... may be required... to verify that proper waste treatment or control practices are being maintained...". While the treatment process upstream of internal Outfall 002 involves pH control for metals removal, the wastewater from internal Outfall 002 commingles three additional internal outfalls, Outfall 003, Outfall 004, and Outfall 005 (Internal Outfall 002 comprises less than 1% of the combined wastewater flow volume) in a large sedimentation basin prior to final treatment and discharge at final Outfall 001. Given the insignificant impact that the pH of internal Outfall 002 would have on the pH of the combined wastewater discharge and the fact that the permit imposes a pH limitation, a continuous monitoring obligation, and reporting requirements at the final discharge point, Outfall 001, continuous monitoring</p> <p>Kaiser Aluminum Fabricated Products, LLC Comments on Draft NPDES Permit No.WA0000892 November 15, 2010 Page 3 of 6</p>	<p>K-8. Ecology agrees and had omitted pH monitoring at Outfall 006 in the final permit.</p> <p>K-9. Ecology agrees and has omitted pH monitoring at Outfall 002 in the final permit.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>K-9 (con'd) serves no beneficial purpose with respect to the maintenance of waste treatment or control practices related to pH. The imposition of a continuous pH monitoring requirement at internal Outfall 002, while imposing a continuous pH monitoring requirement at the final discharge point, is unjustifiable under WAC 173-220-210 and serves no environmental protection purpose. As a result, pH monitoring and reporting requirements should be removed from the permit for internal Outfall 002.</p> <p>Issue – Duplicative Limitations are Imposed on Total Phosphorous</p> <p>Ecology has proposed limitations and monitoring and reporting requirements for Total Phosphorous for the combined internal Outfalls 002 and 003 while also imposing requirements for Best Management Practices (BMPs) Plan for the entire facility.</p> <p><u>Comment</u></p> <p>The permit imposes limitations for total phosphorous (daily maximum and monthly average) at final Outfall 001. Compliance with this limitation is to be demonstrated through the monitoring of internal Outfalls 002 and 003. On page 20 of the Fact Sheet, Ecology states that, "The purpose of these interim limitations are to hold the discharge to existing phosphorous, CBOD, and ammonia levels during the critical time period (i.e. no increase in loading)." With respect to BMPs, the draft permit (Special Condition S4) states that, "The goal of the BMP plan is to maintain effluent concentrations of total phosphorous, CBOD, and ammonia at or below current discharge levels." Based on the above statements, Ecology is clearly imposing duplicative limitations for total phosphorous. In addition, the Fact Sheet also provides total phosphorous data that shows that the total phosphorous contribution of internal Outfalls 002 and 003 ranges between 11% and 33% of the total loading from all internal outfalls. Thus not only is the imposition of interim limitations in the form of a daily maximum and monthly average discharge limitations for internal Outfalls 002 and 003 duplicative given the BMP plan requirement, but it does little to hold the facility's total phosphorous discharge at current levels given the minor percentage of the total internal phosphorous loading represented by these two internal outfalls. As a result, the total phosphorous monitoring, reporting, and effluent limitations related to internal Outfalls 002 and 003 serve no environmentally beneficial purpose and should be removed from the permit.</p> <p><u>Comment</u></p> <p>K-11 Notwithstanding the above comment, should the department impose internal, interim limitations for total phosphorous, the Kaiser Aluminum / Inland Empire Paper "phosphorous bubble" (with adjustment for interim limitations imposed on both facilities) should be retained. (See current permit Special Condition S1</p> <p>Kaiser Aluminum Fabricated Products, LLC Comments on Draft NPDES Permit No.WA0000892 November 15, 2010 Page 4 of 6</p>	<p>K-10. Ecology disagrees. The phosphorus limit in the permit will hold the discharge levels from Outfalls 002 and 003 to current levels. At present, Ecology does not have enough phosphorus data to establish a performance based effluent limit for the final discharge to the Spokane River.</p> <p>Ecology expects the BMP plan will include pollution prevention and reduction opportunities facility wide, applying to all outfalls. The Federal Regulations in 40 CFR part 122.44(k)(4) allow the use of BMPs to control or abate pollution when the practices are reasonably necessary to carry out the purposes and intent of the Clean Water Act. One intent of the CWA includes the elimination of pollutants discharged to surface waters.</p> <p>For phosphorus, Ecology has implemented the CWA intent through a combination of the numeric limit applying to Outfalls 002 and 003; and the use of BMPs to reduce phosphorus concentrations in the discharge.</p> <p>K-11. During the life of the previous permit, the Permittee has met their individual permit limit during the critical season running from June through October. Likewise, Inland Empire Paper Company has likewise met their individual monthly average limit of 24.7 pounds per day during the same time period. The facilities have never used the aggregate bubble limit to comply with the previous water quality based effluent limits for total phosphorus.</p> <p>Based on best professional judgment, the interim limit for total phosphorus is a performance based effluent limit. This performance based limit replaces the less stringent water quality based bubble limit shared between the two facilities in the previous permit.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>K-11 (con'd) "Effluent Limitations", Paragraph 3 "Spokane River Phosphorous Management Plan"). There is no basis for removing this current permit condition if interim limitations are imposed. This bubble has been in place for 13 years and could serve as a model for a future component of Delta Elimination Plans.</p> <p>Issue – Delta Elimination Plan Content</p> <p>While Special Condition S4 of the draft permit identifies several components that could be included in a Delta Elimination Plan, the components identified do not appear to include pollutant trading or point source bubbling.</p> <p><u>Comment</u></p> <p>K-12 While a pollutant trading system is not currently in place for the Spokane River watershed, the acceptable components for a Delta Elimination Plan should include an approved trading program and a point source bubble.</p> <p>Issue – Submittal Timeframe for Priority Pollutant Results</p> <p>Permit Special Condition S3A requires that priority pollutant analysis data be submitted no later than 45 days following the monitoring period.</p> <p><u>Comment</u></p> <p>The draft permit contains monitoring and reporting requirements for PCBs at two locations, the inlet to the Black Walnut Shell Filter System and final Outfall 001. The analytical methods required by these monitoring requirements have laboratory turn around times on the order of 6 to 8 weeks. Since samples are required to be taken on a bi-weekly basis, sample collection and shipment will fall during the last week of the monitoring period. As a result, it will be impossible to comply with the report submittal requirement of this Special Condition. The Special Condition needs to be modified to require submittal of analytical results within 15 days of receipt of the laboratory analytical report.</p> <p>K-13</p> <p>Issue – Flowmeter Calibrations</p> <p>Permit Special Condition S2C requires calibration of flowmeters at least annually.</p> <p><u>Comment</u></p> <p>The Trentwood facility utilizes magnetic flowmeter technology for internal Outfall 006 and internal Outfall 007. These two internal outfalls combine to form final Outfall 001. In addition, the main groundwater supply wells utilize magnetic flowmeter technology. This technology requires no calibration once a unit is received from the manufacturer and installed. If verification of initial set up by the</p> <p>Kaiser Aluminum Fabricated Products, LLC Comments on Draft NPDES Permit No.WA0000892 November 15, 2010 Page 5 of 6</p>	<p>K-12. Ecology has added references to both a pollutant trading system and possible multi-facility bubble limit in the final permit.</p> <p>K-13. Comment noted. Ecology has added language to the final permit requiring the permittee to submit PCB analytical test results within 15 days of receipt of the laboratory results. This language appears in condition S3.A, Reporting Requirements.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p data-bbox="153 418 205 443">K-14</p> <p data-bbox="237 342 898 467">manufacturer was required, the unit would need to be removed from service and returned to the manufacturer. This would result in the facility's inability to comply with flow monitoring requirements during the period the flow meter was out for set up verification. The calibration requirement needs to be modified such that compliance with the calibration requirement is based on the manufacturer's recommended frequency.</p> <p data-bbox="237 492 793 511"><u>Issue – Recognition of Total Phosphorous in River Intake Water</u></p> <p data-bbox="237 532 888 617">The facility withdraws and returns approximately between 2 million and 4 million gallons per day of water to the Spokane River. The pass through of total phosphorous is not taken into account with respect to ultimate compliance with waste load allocations.</p> <p data-bbox="237 641 321 660"><u>Comment</u></p> <p data-bbox="153 735 205 760">K-15</p> <p data-bbox="237 683 888 808">Future compliance with the Waste Load Allocation for Total Phosphorous needs to recognize and provide credit under the Delta Plan for that portion of water intake loading that originates from the Spokane River. Data collected from grab samples of river intake water quality and flows in 2007 showed that the mass intake from the river averaged 7.8% of the Waste Load Allocation for the facility and was as high as 12.8% of the Waste Load Allocation.</p> <p data-bbox="237 833 856 852"><u>Issue – Use of Aluminum Forming Effluent Guidelines in Setting Limits</u></p> <p data-bbox="237 873 850 937">The discharge limitations for the facility were developed by applying EPA's Aluminum Forming Effluent Guidelines as contained in 40 CFR 467 and the associated guidance documents.</p> <p data-bbox="237 961 321 980"><u>Comment</u></p> <p data-bbox="153 1052 205 1076">K-16</p> <p data-bbox="237 1000 888 1125">Kaiser supports Ecology's use of EPA's Effluent Guidelines for Aluminum Forming in setting the facility's discharge limits as this provides a level playing field with respect to other aluminum forming operations in the country. The establishment of performance based limits for those parameters covered by the effluent guidelines would be inappropriate. Any changes to this approach would only be appropriate if the applicable EPA Effluent Guidelines were revised.</p> <p data-bbox="237 1328 588 1396">Kaiser Aluminum Fabricated Products, LLC Comments on Draft NPDES Permit No.WA0000892 November 15, 2010 Page 6 of 6</p>	<p data-bbox="1060 248 1990 277">K-14. Comment noted. Ecology has changed this language in the final permit.</p> <p data-bbox="1060 305 1990 467">K-15. Federal regulations in 40 CFR part 122.45(g) sets conditions under which the permitting authority can adjust technology based effluent limitations or standards to reflect credit for pollutants in the discharger's intake water. However, nothing in State Rules or Federal Regulations allow adjusting water quality based effluent limits based on pollutant levels in intake water.</p> <p data-bbox="1060 495 1980 592">To allow for intake water credits for meeting the final water quality based effluent limit for phosphorus, Ecology must have considered and modeled this scenario in the Spokane River DO TMDL.</p> <p data-bbox="1060 620 2001 750">The permit must include final water quality based effluent limits based on the Permittee's WLA in the Spokane River DO TMDL, which is a seasonal average loading of 3.21 lbs/day total phosphorus, based on an effluent concentration of 0.025 mg/L and final effluent discharge flow rate of 15.4 mgd.</p> <p data-bbox="1060 777 1339 807">K-16. Comment noted.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="478 289 648 459" data-label="Image"> </div> <div data-bbox="764 315 980 444" data-label="Text"> <p>RECEIVED NOV 20 2010 SPokane River</p> </div> <p data-bbox="205 467 357 487">November 17, 2010</p> <p data-bbox="205 509 382 594">Permit Coordinator Department of Ecology 4601 N. Monroe Spokane, WA 99205</p> <p data-bbox="205 617 277 636">Dear Sir:</p> <p data-bbox="205 659 924 721">The Lake Spokane Association (LSA) is a non-profit corporation of citizens concerned about the health of Lake Spokane. We appreciate the opportunity to comment on the draft NPDES permits covering the discharge of phosphorus into the Spokane River.</p> <p data-bbox="134 782 186 802">LS-1</p> <p data-bbox="205 743 924 847">We applaud the efforts made, to date, in removing phosphorus from the Spokane River and Lake Spokane through the development of the Dissolved Oxygen TMDL. We understand the need for a 20 year time line to develop phosphorus removal technologies, allowing the dischargers time to implement these technologies. Unfortunately the permits do not adequately address the issue of reducing the impact of high phosphorus levels in Lake Spokane during the 20 year period.</p> <p data-bbox="205 870 924 997">During the fall of 2010, a very active blue-green algae bloom, causing unsightly and foul smelling mats, developed in Lake Spokane, lasting two months. When samples of this algae were submitted to a laboratory, paid for by your agency, they found high levels of toxins harmful to human health. The Washington Department of Health then posted signs at key access sites, on the lake, advising citizens to be aware of the blooms and not to use the lake where the blooms were occurring.</p> <p data-bbox="134 1065 186 1084">LS-2</p> <p data-bbox="205 1019 924 1146">We ask that the permits require the dischargers to fund or implement procedures that will reduce the presence and impact of the blue-green algae during the life of the permits. Techniques that could be used include treating blue-green algae blooms with chemicals, such as sodium carbonate proxyhydrate or aluminum sulfate at inshore areas. Volunteer funded monitoring programs, such as the LSA, to identify blue-green algae blooms and record turbidity readings, could help this effort.</p> <p data-bbox="134 1234 186 1253">LS-3</p> <p data-bbox="205 1169 924 1315">We are aware that local non-point sources around the lake and in the watershed are also adding to the problem. These sources could include lawn fertilizer, yard waste, septic tanks and drain fields, and livestock operations. We see value in dischargers helping fund educational efforts aimed at shoreline homeowners and local citizens regarding the impacts that they have on the health of the lake. We understand that Avista is proposing similar efforts and believe this would be consistent with them. Such efforts could also include funds to dispose of the yard and livestock waste and to inspect septic tanks and drain fields.</p> <div data-bbox="237 1365 890 1393" data-label="Page-Footer"> <p>18520 N West Shore Rd Nine Mile Falls WA 99026 www.lakespokaneassociation.org</p> </div>	<p data-bbox="1060 250 1955 347">LS-1. The point sources will reduce the discharge of oxygen demanding pollutants (total phosphorus, ammonia, and CBOD) within 5 to 7 years after permit issuance.</p> <p data-bbox="1060 373 1925 470">LS-2. The goal of NPDES permit program is to prevent, control and treat pollution at the source, rather than relying on in-water treatment to meet receiving water quality criteria.</p> <p data-bbox="1060 496 1961 594">LS-3. Ecology also envisioned the delta elimination plan could include such measures. Permittees, either individually or combined, could pursue these actions under delta elimination planning.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p data-bbox="233 337 409 378">Page two Department of Ecology</p> <p data-bbox="149 488 201 513">LS-4</p> <p data-bbox="233 443 896 570">The draft permits are silent about discharging PCB's and other pollutants into the river. A December 2007 report by the U.S. Environmental Protection Agency identified the City of Spokane "as the largest continuing source of PCBs to the river." This is of great concern to the citizens using the Spokane River and Lake Spokane. It is critical that PCB limits be included now when major upgrades to wastewater plants are being installed to address phosphorus.</p> <p data-bbox="233 592 447 675">Sincerely,  Robert J. Bankard, President Lake Spokane Association</p>	<p data-bbox="1062 248 2007 545">LS-4. Ecology believes the draft permit did address PCBs discharge from the facility into the Spokane River. The permit includes a PCB limit on the inlet side of the black walnut shell (BWS) treatment system. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM**RESPONSES**

1 DEPARTMENT OF ECOLOGY
2 PUBLIC HEARING
3 DRAFT WATER QUALITY PERMITS FOR
4 SPOKANE RIVER DISCHARGERS IN WASHINGTON
5 November 10, 2010, 7:00 P.M.
6 1101 West College Avenue, Spokane, Washington
7
8

9
10 P R O C E E D I N G
11

12 THE HEARINGS OFFICER: Hello. My name is Karin
13 Baldwin, and I am the hearings officer for tonight's
14 hearing. On behalf of the Department of Ecology, thank you
15 for coming and welcome.

16 Our purpose of our hearing is to gather public comment
17 on the four draft water quality permits for the Spokane
18 River dischargers in Washington State: Spokane's Riverside
19 Park Water Reclamation Facility, Inland Empire Paper, Kaiser
20 Aluminum, and Liberty Lake Sewer and Water District. This
21 hearing is a part of the public comment period for the draft
22 permits. The public comment period ends at 5:00 p.m. on
23 Wednesday, November 17, 2010.

24 On the table at the back door there's a sign-in sheet
25 and some registration cards that look like this. If you

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COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="210 276 980 1360"> <p>1 wish to testify, please fill out a card and give it to me.</p> <p>2 And I will be calling people up to testimony in the order in</p> <p>3 which you signed in.</p> <p>4 So as the hearings officer, my job is to conduct the</p> <p>5 hearing and gather your comments for the public record. I</p> <p>6 also need to make sure that Ecology obtains a clear record</p> <p>7 of the hearing, which is why we will be recording the</p> <p>8 hearing and why we've hired a court reporter.</p> <p>9 Everyone who wishes to comment will be given the</p> <p>10 opportunity to testify. In order to give everyone an</p> <p>11 opportunity to comment, there's a few ground rules. Only</p> <p>12 one person will speak at a time. And I will call people up</p> <p>13 to comment in the order in which you signed in, again. And</p> <p>14 so speakers come to the podium there and speak into the</p> <p>15 microphone so they can be heard and recorded. And please</p> <p>16 state your name, the company or organization you represent,</p> <p>17 if any, and your address for the record. And all of that</p> <p>18 information is on a sheet there on the podium so you'll</p> <p>19 remember to say that.</p> <p>20 I ask that you speak clearly and not too fast so</p> <p>21 everyone else can hear you, and so we can obtain a clear</p> <p>22 recording of the comments. So please keep your comments</p> <p>23 concise so everybody who has signed in will be able to have</p> <p>24 a chance to testify. I don't think we'll have a problem</p> <p>25 with that tonight.</p> </div> <div data-bbox="262 1359 959 1417"> <p>SPokane Reporting Service, Inc. 2 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="216 277 982 1360"> <div>1</div> <div>Written comments are given the same consideration as</div> <div>2</div> <div>verbal ones. So you can summarize lengthy or repetitive</div> <div>3</div> <div>comments. And you may also submit additional written</div> <div>4</div> <div>comments, as well.</div> <div>5</div> <div>During the hearing questions can be asked for the</div> <div>6</div> <div>record, but they cannot be answered. Questions given during</div> <div>7</div> <div>the formal testimony will be answered in the written</div> <div>8</div> <div>responsiveness summary at the end of the comment period.</div> <div>9</div> <div>So right now I only have six people who had indicated</div> <div>10</div> <div>they would like to provide oral testimony. Is there anybody</div> <div>11</div> <div>else who would like to testify at this time?</div> <div>12</div> <div>(No response)</div> <div>13</div> <div>So because we only have six people, and we're here</div> <div>14</div> <div>until 9:00 o'clock, does 10 minutes give everybody</div> <div>15</div> <div>sufficient time to get all of your comments into the record?</div> <div>16</div> <div>UNIDENTIFIED SPEAKER: Sure.</div> <div>17</div> <div>THE HEARINGS OFFICER: Okay. So we'll go 10 minutes.</div> <div>18</div> <div>Audience members, please allow the person commenting to have</div> <div>19</div> <div>the floor, so no side conversations. And this will help us</div> <div>20</div> <div>to make sure we get a clear recording.</div> <div>21</div> <div>Any questions? Everyone okay with the ground rules?</div> <div>22</div> <div>(No response)</div> <div>23</div> <div>Okay. So I will now start the formal hearing. The</div> <div>24</div> <div>court reporter and I will be recording this part of he</div> <div>25</div> <div>hearing to make sure we get all of your comments accurately.</div> </div> <div data-bbox="266 1360 959 1421"> <div>SPOKANE REPORTING SERVICE, INC.</div> <div>421 W. Riverside, Suite 1010, Spokane, WA 99201</div> <div>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</div> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="216 277 980 1360"> <div>1 So let the record show it is 7:05 p.m., again, on</div> <div>2 Wednesday, November 10th, 2010. This hearing is being held</div> <div>3 at the Spokane Regional Health District auditorium located</div> <div>4 at 1101 West College Avenue in Spokane, Washington.</div> <div>5 This hearing is about four draft permits for Spokane</div> <div>6 River dischargers in Washington State: Spokane's Riverside</div> <div>7 Park Water Reclamation Facility, Inland Empire Paper, Kaiser</div> <div>8 Aluminum, and Liberty Lake Sewer and Water District.</div> <div>9 Ecology issued a news release about the comment</div> <div>10 period, workshop and this hearing for the draft permits on</div> <div>11 October 4th, 2010, to the media in the Spokane area.</div> <div>12 Also on October 4th, 2010, Ecology emailed an</div> <div>13 announcement of the comment period, workshop and hearing to</div> <div>14 a distribution list of interested individuals.</div> <div>15 Legal ads of the public comment period and hearings</div> <div>16 were published in the Spokesman-Review on October 5th, 2010.</div> <div>17 Ecology also placed information about the draft</div> <div>18 permits on their website, and just recently included an</div> <div>19 announcement about the hearing on their online public</div> <div>20 calendar.</div> <div>21 It is now time for the formal hearing period for</div> <div>22 anyone who would like to comment. Before we start, again,</div> <div>23 has everybody who wants to testify given me a registration</div> <div>24 card?</div> <div>25 (No response)</div> </div> <div data-bbox="266 1360 959 1421"> <div>SPOKANE REPORTING SERVICE, INC. 4</div> <div>421 W. Riverside, Suite 1010, Spokane, WA 99201</div> <div>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</div> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="247 277 982 1360" style="border: 1px solid black; padding: 10px;"> <p>1 Okay. As I said, I'll be calling you to testify in</p> <p>2 the order in which you signed in. Remember, limit comments</p> <p>3 to 10 minutes and no extra noise. When you are nearing the</p> <p>4 end of your time, I will hold up a card to let you know</p> <p>5 there's 30 seconds remaining. And I will state when your</p> <p>6 time is over, and I'll call the next person up to comment.</p> <p>7 After everyone is finished, I will provide an opportunity</p> <p>8 for any other people to testify.</p> <p>9 When I call your name, please come up to the podium</p> <p>10 and state your name, the company or organization you</p> <p>11 represent, if any, and your address.</p> <p>12 We will begin with Ken Blankenship followed by Mike</p> <p>13 Poulson.</p> <p>14 MR. KEN BLANKENSHIP: All right. My name's Ken</p> <p>15 Blankenship. The organization I'm representing is BASF</p> <p>16 Corporation. My address is 15906 North McKinnon Lane,</p> <p>17 Colbert, Washington, 99005.</p> <p>18 THE HEARINGS OFFICER: I'm sorry to interrupt. But</p> <p>19 can you turn on your microphone. There's a little button in</p> <p>20 the middle there.</p> <p>21 MR. KEN BLANKENSHIP: There you go.</p> <p>22 THE HEARINGS OFFICER: Thank you.</p> <p>23 MR. KEN BLANKENSHIP: So as I said, my name's Ken</p> <p>24 Blankenship. I'm an engineer for BASF Corporation and spend</p> <p>25 the majority of my workweek managing my business at Inland</p> </div> <div data-bbox="266 1360 961 1421" style="text-align: right; margin-top: 10px;"> <p>SPOKANE REPORTING SERVICE, INC. 5 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="247 277 982 1360" style="border: 1px solid black; padding: 10px;"> <p>1 Empire Paper Company. My wife, Kim, and I reside in</p> <p>2 Colbert, Washington, about 10 miles north of the Inland</p> <p>3 Empire paper mill.</p> <p>4 My work has allowed me to make a good living. And we</p> <p>5 purchased a home in 1998 and consider the greater Spokane</p> <p>6 area our permanent home. Our two children attended grade</p> <p>7 school, middle school and high school here. Currently</p> <p>8 they're both attending college locally at WSU and Whitworth</p> <p>9 University.</p> <p>10 Since relocating here from Minnesota, we've had</p> <p>11 several opportunities to relocate within the U.S. and</p> <p>12 internationally. I have consistently declined these</p> <p>13 opportunities because of the quality of life here coupled</p> <p>14 with the professional and personal satisfaction I've enjoyed</p> <p>15 working with Inland Empire Paper Company. Without Inland,</p> <p>16 the reality of my family being able to remain in the Spokane</p> <p>17 area does not exist.</p> <p>18 I've been a part of the paper industry since 1987 and</p> <p>19 have witnessed good times of growth and prosperity, but</p> <p>20 recently the rapid decline of our industry. With the</p> <p>21 decline, I have seen untold numbers of good jobs like those</p> <p>22 at Inland and jobs of outside support people like myself</p> <p>23 disappear for good. I believe Inland is an exception to</p> <p>24 this trend. The investment I've seen over my 12 years here</p> <p>25 and the long-term commitment that the mill's ownership makes</p> </div> <div data-bbox="268 1362 961 1421" style="text-align: right; margin-top: 10px;"> <p>SPOKANE REPORTING SERVICE, INC. 6</p> <p>421 W. Riverside, Suite 1010, Spokane, WA 99201</p> <p>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>1 to its business, employees and community is unique in my 2 experience.</p> <p>3 A good portion of the business I have at Inland is 4 with their process water treatment systems. I have worked 5 closely with their technical people over the last several 6 years to solve a number of challenges the Lake Spokane TMDL 7 presents. I can attest to the focus, dedication and 8 expertise that they have brought to the table to devise 9 solutions. I know Inland is doing its part. My request of 10 Ecology is that for the betterment of Spokane's residents 11 and economy that you do your part to make sure their efforts 12 are allowed to succeed.</p> <p>13 THE HEARINGS OFFICER: Thank you, very much.</p> <p>14 MR. KEN BLANKENSHIP: Thank you.</p> <p>15 THE HEARINGS OFFICER: Mike Poulson followed by Bart 16 Haggin.</p> <p>17 MR. MIKE POULSON: My comment will be on behalf of 18 Congresswoman Cathy McMorris Rogers.</p> <p>19 I appreciate the opportunity to express my concerns 20 regarding the draft National Pollutant Discharge Elimination 21 System permit and the potential impact and precedent it will 22 set for Spokane County and the small communities in Eastern 23 Washington. I would like to take this opportunity to 24 recognize the efforts of our local TMDL advisory group who 25 have worked tirelessly to develop a plan that will allow</p> <p style="text-align: right;">7</p> <p style="text-align: center;">SPOKANE REPORTING SERVICE, INC. 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-1</div> <div> <p>1 Spokane and the region to prosper.</p> <p>2 I wholeheartedly support efforts to ensure clean</p> <p>3 water, both for our communities and for fish populations. I</p> <p>4 recognize that balancing the appropriate level of regulatory</p> <p>5 enforcement needed to protect our natural resources with the</p> <p>6 demand for economic growth can be a difficult task.</p> <p>7 However, I am concerned that the draft permit may go beyond</p> <p>8 what is necessary to achieve this objective, will create an</p> <p>9 uncertain environment for our businesses and ultimately will</p> <p>10 have an adverse impact on our region.</p> <p>11 We all agree that regulatory requirements should be</p> <p>12 consistent with the best available technology. However, the</p> <div>PH-2</div> <p>13 proposed regulations relating to the TMDL cannot be met with</p> <p>14 the best available technology. As you may be aware, the</p> <p>15 University of Washington has conducted additional studies</p> <p>16 relating to the issue of phosphorus bio availability. The</p> <p>17 UW studies reveal that some phosphorus in discharges may not</p> <p>18 contribute to the algae growth or to reduction in oxygen in</p> <p>19 the river. I urge the Department of Ecology to work with</p> <div>PH-3</div> <p>20 the University of Washington to incorporate these scientific</p> <p>21 studies as it finalizes the NPDES permit.</p> <p>22 If we are going to continue to maintain and improve</p> <p>23 environmental quality, science should play a significant</p> <p>24 role. It is in all of our best interests to find solutions</p> <p>25 that are not only affordable but technologically possible in</p> </div> </div> <div> <p>SPOKANE REPORTING SERVICE, INC. 8</p> <p>421 W. Riverside, Suite 1010, Spokane, WA 99201</p> <p>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-1. Ecology believes the permit implements the necessary requirements to meet receiving water quality standards. Among the requirements that lessen the impacts on dischargers include the compliance schedule for meeting the final water quality based effluent limits and the use of delta elimination.</p> <p>Ecology acknowledges the delta elimination planning creates some uncertainty for discharges at this point in time. However, Ecology remains confident that these uncertainties will diminish as delta elimination options are developed by the dischargers.</p> <p>PH-2. Ecology also acknowledges that the dischargers will likely rely on technology plus delta elimination to meet their final water quality based limits. The final permit includes language that enables the facility to meet their final limits with delta elimination options. These options include accounting for phosphorus bioavailability, trading to reduce nutrient levels consistent with Ecology’s Water Quality Trading Framework, pollutant equivalency, and implementation of a multi-facility bubble limit for nutrients.</p> <p>PH-3. Ecology plans to work with the University of Washington, dischargers, and other affected stakeholders on bioavailability determinations. Ecology expects to incorporate bioavailability results in a modification to the Spokane River DO TMDL. In turn, Ecology will place any revised WLAs into the permits at the second permit term, or sooner, through permit modification.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="142 1008 197 1032">PH-4</div> <div data-bbox="216 277 982 1360"> <p>1 order to achieve a clean environment.</p> <p>2 Thank you again for the opportunity to express my</p> <p>3 views.</p> <p>4 Cathy McMorris Rogers.</p> <p>5 THE HEARINGS OFFICER: Thank you, very much.</p> <p>6 Bart Haggin followed by Larry Elmose.</p> <p>7 MR. BART HAGGIN: My name's Bart Haggin. And I'm</p> <p>8 representing the Alliance Council. I live at 15418 North</p> <p>9 Little Spokane Drive. A while back one of the comedians did</p> <p>10 a parody of Marlon Brando addressing a group of Mafia dons.</p> <p>11 And it went something like this: Your son is dead. My son</p> <p>12 is dead. Our wives are all alive. Where are our</p> <p>13 priorities? And that's what I'm speaking about today, the</p> <p>14 priorities of the DOE.</p> <p>15 We're talking here about only really one element, and</p> <p>16 that's phosphorous. Ignoring the PCBs, at least the</p> <p>17 perception is that we're ignoring PCBs and other</p> <p>18 contaminants. And perception becomes reality. And it's</p> <p>19 really important that we talk about the other elements and</p> <p>20 be clear about what the other elements are that are being</p> <p>21 addressed by the Department of Ecology.</p> <p>22 Now, I understand what we're talking about here.</p> <p>23 There's a great pushback from the rich and the powerful, the</p> <p>24 corporations, the collectives that have a, a real stake in</p> <p>25 the costs and the problems of cleaning up our river. We've</p> </div> <div data-bbox="275 1365 961 1419"> <p>SPOKANE REPORTING SERVICE, INC. 9 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-4. Although the main topic discussed was phosphorus, the permits do address the discharge of all pollutants of concern to the Spokane River. These include other oxygen demanding pollutants (ammonia, CBOD), PCBs, and metals (cadmium, lead and zinc).</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="142 678 197 704" data-label="Text"> <p>PH-5</p> </div> <div data-bbox="226 305 982 1360" data-label="Text"> <p>1 been working and cleaning up this river since the Clean 2 Water Act.</p> <p>3 And never forget that the Clean Water Act when it was 4 enacted was the premise that we would be able to swim in all 5 of the rivers of the United States and eat all of the fish 6 out of the rivers of the United States by 1986. Well, I 7 don't think that we're living up to our commitments.</p> <p>8 And I would really urge the DEO to change their 9 priorities, emphasize other than just phosphorous, which I 10 know is very important, but emphasize the other elements 11 that really make up the total maximum daily load of the 12 Spokane River.</p> <p>13 Now, I live on the Little Spokane River. And we've 14 constantly emphasized these elements with DOE. But, of 15 course, enforcement is almost impossible. Here are your 16 priorities. You've got a water master in Walla Walla and no 17 water master in Eastern Washington other than that. Here in 18 the cities in the County of Spokane, the largest amount of 19 population and no water master. Which gives a pretty good 20 indication of the priorities that are in existence at DOE.</p> <p>21 So that's my request. My request is for you to 22 reprioritize. Now, I know that's the hardest thing we do. 23 It's the hardest thing I do is prioritizing my time, my 24 resources, my energy. But I think it's time. It's way past 25 time that we organize and reorganize and reprioritize our</p> </div> <div data-bbox="142 1269 197 1295" data-label="Text"> <p>PH-6</p> </div> <div data-bbox="268 1360 982 1419" data-label="Text"> <p>SPOKANE REPORTING SERVICE, INC. 10 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<div data-bbox="1062 245 1976 370" data-label="Text"> <p>PH-5. See response to PH-5.</p> <p>PH-6. The issuance of these permits will begin the process of cleaning up the Spokane River and Lake Spokane.</p> </div>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-6 (con'd)</div> <div> <p>1 efforts to clean up the Spokane River</p> <p>2 Thank you.</p> <p>3 THE HEARINGS OFFICER: Thank you.</p> <p>4 Larry Elmore followed by Michael Chappell.</p> <p>5 MR. LARRY ELMOSE: My name is Larry Elmore. I'm here</p> <p>6 tonight to testify on behalf of those I work for, work with</p> <p>7 and who I work for, Inland Empire Paper. My address is 560</p> <p>8 North Moose Street, Rathdrum, Idaho.</p> <p>9 I've been working at Inland Empire Paper for almost 18</p> <p>10 years and came from a failing lumber industry where I was</p> <p>11 employed for 11 years at Louisiana Pacific in Post Falls,</p> <p>12 which is no longer in business, partly because of</p> <p>13 environmental issues.</p> <p>14 I started working at Inland Empire Paper with no</p> <p>15 knowledge of the paper making process. I associated paper</p> <p>16 mills with that odd smell similar to French Town or</p> <p>17 Lewiston. I soon found out that Inland Empire Paper uses a</p> <p>18 different process to produce paper. And one that uses waste</p> <p>19 products from around the region which creates jobs, and has</p> <p>20 been doing it for almost a hundred years.</p> <p>21 As millwright at the mill, I've been involved in</p> <p>22 several major projects to increase the efficiency of the</p> <p>23 mill, including a new paper machine and a pulp mill, both</p> <p>24 with technologies to produce paper with a lower impact on</p> <p>25 the environment and lessens our carbon footprint, all of</p> </div> </div> <div> <p>SPOKANE REPORTING SERVICE, INC. 11</p> <p>421 W. Riverside, Suite 1010, Spokane, WA 99201</p> <p>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>1 which I am concerned with.</p> <p>2 I've also worked on many of the trials and processes</p> <p>3 the company has implemented into the various areas of the</p> <p>4 mill to help improve the environmental impact on the water,</p> <p>5 the land, and the air Inland Empire Paper uses. I</p> <p>6 understand millions have been spent on these projects</p> <p>7 without compulsion. Which shows me the responsibility and</p> <p>8 the commitment Inland Empire Paper has to do that which is</p> <p>9 right for our region and for the environment.</p> <p>10 Along with 137 employees that work at Inland Empire</p> <p>11 Paper, countless others have been involved in the above</p> <p>12 mentioned projects, all of which have given a boost to our</p> <p>13 region's economy. I am proud to be an employee of Inland</p> <p>14 Empire Paper Company. I have personally seen the commitment</p> <p>15 of the company to ensure the protection of the environment</p> <p>16 in our area.</p> <p>17 Inland Empire Paper sits along the beautiful Spokane</p> <p>18 River and has for years. It has and will be committed to</p> <p>19 its protection and safety for as long as it stands. I know</p> <p>20 it will. In fact, I'm counting on it, just as many others</p> <p>21 are.</p> <p>22 I'm thankful to have a good paying job with benefits.</p> <p>23 I see so many out of work and struggling to stay afloat. I</p> <p>24 see others just getting by. Inland Empire Paper is one of</p> <p>25 the top paying companies in the region with a secure future.</p> <p> SPOKANE REPORTING SERVICE, INC. 12 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com </p>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="216 277 982 1360" style="border: 1px solid black; padding: 10px;"> <p>1 I don't have to worry what I will have to, what I will be</p> <p>2 doing in a month from now or a year from now. And that</p> <p>3 gives me peace of mind. I want this kind of job for my</p> <p>4 children and for my grandchildren.</p> <p>5 One day this great nation will be like it was. We all</p> <p>6 need to work together for the good of its citizens. I want</p> <p>7 to feel secure in my future, just as everyone else does. I</p> <p>8 hope the agencies will find a sound solution for Inland</p> <p>9 Empire Paper, one that will ensure our future and the future</p> <p>10 of generations to come.</p> <p>11 Thank you.</p> <p>12 THE HEARINGS OFFICER: Thank you, very much.</p> <p>13 Michael Chappell followed by Sean Hackett.</p> <p>14 MR. MICHAEL CHAPPELL: Thank you. My name is Michael</p> <p>15 Chappell. I'm the Director of the Environmental Law Clinic</p> <p>16 at Gonzaga. I'm appearing tonight on behalf of Spokane</p> <p>17 Riverkeeper, the Lands Council, and Kootenai Environmental</p> <p>18 Alliance. My address is 721 North Cincinnati Street,</p> <p>19 Spokane, 99220.</p> <p>20 My comments tonight, probably no surprise to those</p> <p>21 people in the room who know me, are gonna focus mainly on</p> <p>22 PCBs. I'm also gonna talk briefly about compliance</p> <p>23 schedules and delta elimination. We are gonna provide</p> <p>24 written comments that are gonna go into far more detail. I</p> <p>25 just want to go through just what we're gonna discuss in</p> </div> <div data-bbox="266 1360 978 1421" style="text-align: right; margin-top: 10px;"> <p>SPOKANE REPORTING SERVICE, INC. 13 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<p>1 written comments.</p> <p>2 First, PCBs. I have to, as an aside I'll say I was</p> <p>3 not heartened by the discussion that occurred tonight on</p> <p>4 what Ecology's plan is for PCBs. In my opinion and the</p> <p>5 opinion of the environmental groups that my clinic</p> <p>PH-7 6 represents, these permits do a major disservice to the</p> <p>7 environmental groups, do a disservice to the people that use</p> <p>8 the Spokane River, the people that want to fish and eat out</p> <p>9 of the Spokane River. And probably most importantly, this</p> <p>10 permit, these permits in regards to PCBs do a disservice to</p> <p>11 the dischargers that are gonna rely on the regulatory agency</p> <p>12 to issue legal permits what won't have, that leave them open</p> <p>13 for further litigation.</p> <p>14 My clients and I consistently said, we said at the</p> <p>15 Spokane River Forum, we said all along in private and public</p> <p>16 meetings that if these permits do not include water quality</p> <p>PH-8 17 based effluent limits that create a true path to cleaning up</p> <p>18 PCBs in the Spokane River, we are gonna sue the Department</p> <p>19 of Ecology. We are not -- unfortunately, what came out did</p> <p>20 not heed that warning.</p> <p>21 Now, the side effect of that is you have also left,</p> <p>22 you've left Liberty Lake, City of Spokane, Inland Empire</p> <p>23 Paper, not Kaiser, because Kaiser's a slightly different</p> <p>24 realm, because you actually have performance limits in the,</p> <p>25 in the permit. But you've left these dischargers in an</p> <p style="text-align: right;">14</p> <p style="text-align: center;">SPOKANE REPORTING SERVICE, INC. 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p>	<p>PH-7. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River; and specifically addresses the PCB 303(d) listings in the Spokane River and Lake Spokane.</p> <p>The permit includes a PCB limit on the inlet side of the black walnut shell (BWS) treatment system. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p> <p>PH-8. Ecology believes the PCB monitoring, effluent limit, ongoing efforts for PCB source identification and reduction at the facility and the new requirement that the Permittee participate in a Spokane River Regional Toxics Task Force take definitive first steps in meeting receiving water quality criteria.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-9</div> <div> <div>1</div> <div>2</div> <div>3</div> </div> <div> <p>untenable situation where they are going to be open to litigation from environmental groups the day these permits hit.</p> </div> </div> <div> <div>PH-10</div> <div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> </div> <div> <p>The requirements for the Clean Water Act clearly states if the Department of Ecology understands that there is a problem and an issue, the exact language is Ecology has a duty to determine if the discharge will cause or contribute to violations to water quality standards. Once that determination is made, pursuant to 40 CFR 122.44, Ecology must calculate the water quality based effluent.</p> </div> </div> <div> <div>PH-11</div> <div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> </div> <div> <p>Washington Supreme Court has already ruled on this in <u>Port of Seattle vs Pollution Control Hearings Board</u>. They explained, 1) NPDES permits must be, may be issued only where the discharger in question will comply with State water quality standards. 2) Effluent limits, in turn, 33 USC 1311(e)(1)(C) requires effluent limits to comply with state water quality standards</p> </div> </div> <div> <div>PH-12</div> <div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <p>And finally, 40 CFR 122.44 requires State issued NPDES permits to contain conditions requiring compliance with water quality standards.</p> <p>Again, right now, unless you put water quality based effluent limits in these permits, these dischargers are going to be open to a lawsuit. What that lawsuit will say is you are required under the law to meet water quality based effluent -- I'm sorry. You are required to meet water</p> </div> </div>	<p>PH-9. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River; and specifically addresses the multiple 303(d) listings of the Spokane River.</p> <p>PH-10. Comment noted. See response to Comment PH-7.</p> <p>PH-11. Comment noted. See response to Comment PH-7.</p> <p>PH-12. Comment noted. See response to Comment PH-7.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-13</div> <div> <p>1 quality standards.</p> <p>2 We've just had a discussion here tonight. We know</p> <p>3 that that's not occurring. Unless you put water quality</p> <p>4 based effluent limits in these permits, the dischargers</p> <p>5 cannot get compliance schedule. And the minute that these</p> <p>6 permits are adopted, they're gonna be open to legal</p> <p>7 challenges. Not just Ecology but permittees, as well.</p> <p>8 You're doing a disservice to the, to the dischargers.</p> <p>9 You need to come up with water quality based effluent limits</p> <p>10 that address PCBs that put us on a path to recovery.</p> <p>11 The idea that somehow we have a paucity of data is a</p> <p>12 joke. We have been studying this for 30 years. The PCB</p> <p>13 TMDL goes back, it lists 21 different studies that have been</p> <p>14 done since 1980 regarding PCBs in the Spokane River. There</p> <p>15 is no doubt we have an issue. We know it's a problem. We</p> <p>16 know the dischargers in question are violating water quality</p> <p>17 standards now. It is Ecology's duty to make sure that these</p> <p>18 permits include water quality based effluent limits.</p> <p>19 This is a -- everybody here's aware, this is a 303</p> <p>20 U.S.A. water body. It's impaired for PCBs. We need to</p> <p>21 address it. The environmental groups that I represent have</p> <p>22 said over and over again to the Department of Ecology you</p> <p>23 need to address PCBs. The fact that you have made it a</p> <p>24 calculated decision to only look at DO and phosphorous in</p> <p>25 the last 13 years is, again, a disservice to the</p> </div> </div> <div> <div>PH-14</div> </div> <div> <div>PH-15</div> </div> <div> <p>SPOKANE REPORTING SERVICE, INC. 16</p> <p>421 W. Riverside, Suite 1010, Spokane, WA 99201</p> <p>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-13. Comment noted. See response to comment PH-7.</p> <p>PH-14. Comment noted. See response to comment PH-7.</p> <p>PH-15. Ecology disagrees. Ecology has not ignored the PCB problem in either the proposed permit or final permit. The permit includes a PCB limit on the inlet side of the black walnut shell (BWS) treatment system. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="142 354 212 407">PH-15 (con'd)</div> <div data-bbox="216 277 982 456"> <p>1 environmental groups and to the members that use that river 2 and people that want to go back in that river safely and eat 3 the fish and use the river in the manner in which it's 4 intended, water contact recreation.</p> </div> <div data-bbox="142 597 212 621">PH-16</div> <div data-bbox="216 467 982 740"> <p>5 So my comment, I guess, is use the 30 years of data 6 that you have. Draft water quality based effluent for PCBs. 7 That will allow the dischargers to receive a compliance 8 schedule. Again, without that compliance schedule, these 9 dischargers are gonna be in violation of the Clean Water Act 10 the day these permits are adopted. They're in violation 11 now.</p> </div> <div data-bbox="216 751 982 943"> <p>12 The hope was, the hope by the environmental group was 13 Ecology had heard the warning from the environmental group, 14 and they were going to be willing to address this issue. 15 Right now you punted on it. And that's not acceptable to 16 these groups.</p> </div> <div data-bbox="142 1206 212 1230">PH-17</div> <div data-bbox="216 954 982 1360"> <p>17 I'm briefly gonna talk, like I said, about the 18 compliance schedules. We're gonna have much more detailed 19 comment when we get to, when we provide written comments. 20 The tentative compliance schedule that you include in the 21 permits is inconsistent with federal law. Those that want 22 to point to Washington law and say, well, Washington has a 23 10 year compliance schedule in the WAC, let's be clear here, 24 the Clean Water Act federal statute says these federal 25 permits must comply with federal law.</p> </div>	<p>PH-16. See responses to comments PH-7.</p> <p>PH-17. The State's Water Quality Standards allows for schedules of compliance, see WAC 173-201A-510 (4). These schedules of compliance "may in no case exceed ten years, and shall generally not exceed the term of any permit", WAC 173-201A-510 (4)(c).</p> <p>Similar to the Federal Rules which state schedules of compliance "shall require compliance as soon as possible", the State WQ Standards also specify that "schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the shortest practicable time", WAC 173-201A-510(4)(a). Ecology has set a 10 year compliance schedule considering the complexities of the dissolved oxygen problem in the Spokane River and the nature of the solution. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final WQBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees will rely on 'delta elimination' to meet their final limits. The 'delta elimination' options may include an accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. With the uncertainties associated with the treatment technologies and delta elimination options, the Department believes the Permittee needs the 10 year compliance schedule specified in the final permit.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="216 277 982 1360" data-label="Text"> <p>1 State law allows you to be more stringent than the 2 federal, the federal guidelines and federal standards. You 3 can't be less stringent. The Ninth Circuit's already ruled 4 on this. Ninth Circuit in <u>Citizens for a Better Environment</u> 5 <u>vs Union Oil Company of California</u> have already stated, let 6 me quote it, There's a five year duration on the life of an 7 NPDES permit that the effective modification asserted here 8 would violate.</p> <p>9 That effective modification was a cease and desist 10 order that included a compliance schedule that's longer than 11 the five year length of the applicable NPDES permit. And 12 the court determined it could not be included in the permit, 13 because it purported to extend a compliance schedule beyond 14 the term of employment. So my comment is Ecology needs to 15 explain how the 10 year compliance schedule is consistent 16 with the Clean Water Act, consistent with federal law.</p> <p>17 My last comment is on the delta elimination. Again, 18 for those that are in the room that sit on the same advisory 19 committee, or go to the advisory committee meetings that I 20 go to, I think I said this consistently, and the 21 environmental groups have said it consistently, the Clean 22 Water Act is silent when it comes to nutrient trading.</p> <p>23 I know there's state, the state WAC at least has 24 guidelines for implementing offsets. My major comment is I 25 would note, and we have said this in prior written comments,</p> </div> <div data-bbox="136 876 210 901" data-label="Text"> <p>PH-18</p> </div> <div data-bbox="136 1266 210 1291" data-label="Text"> <p>PH-19</p> </div> <div data-bbox="266 1359 976 1416" data-label="Page-Footer"> <p>SPOKANE REPORTING SERVICE, INC. 18 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-18. See response to comment PH-17.</p> <p>PH-19. Presently, Ecology and the Spokane River DO TMDL Implementation Advisory Committee is developing a Water Quality Trading Framework that will clarify the use of offsets and pollutant trading. Ecology has also added language to the compliance schedule (Special Condition S5) specifying that the delta elimination may include any approved trades consistent with the Water Quality Trading Framework.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-19 (con'd)</div> <div> <p>1 the WAC says the water quality offset occurs where a project</p> <p>2 proponent implements or finances the implementation of</p> <p>3 controls for point or non-point sources to reduce the level</p> <p>4 of pollution for the purposes of creating sufficient</p> <p>5 simulated capacity to allow, and this is the key, new or</p> <p>6 expanded discharges.</p> </div> </div> <div> <div>PH-20</div> <div> <p>7 Right now the Clean Water Act requires end of pipe</p> <p>8 discharges that meet applicable water quality standards,</p> <p>9 meet applicable technology based effluent limits. There's</p> <p>10 nothing in the Clean Water Act that allows dischargers to</p> <p>11 receive the offsets. While some environmental groups have</p> <p>12 agreed to listen, and I represent many of those, I will note</p> <p>13 that not all the environmental groups are sitting at that</p> <p>14 table. And I think it's, it's important here that Ecology</p> <p>15 ensures that they make it clear to the dischargers that</p> <p>16 there is a potential that they may have to meet end of pipe</p> <p>17 limits. And they need to plan for that accordingly.</p> </div> </div> <div> <div>PH-21</div> <div> <p>18 Again, you're doing a disservice to the dischargers by</p> <p>19 telling them that somehow there's a 10-year compliance</p> <p>20 schedule out there, you're gonna have 10 years in order to</p> <p>21 meet these limits when there's a very real possibility that</p> <p>22 that 10-year compliance schedule into a 5-year compliance</p> <p>23 schedule, and that these nutrient offsets that are out there</p> <p>24 may not be legal.</p> <p>25 I'm gonna turn over the rest of my time to one of my</p> </div> </div> <div> <p>SPOKANE REPORTING SERVICE, INC. 19</p> <p>421 W. Riverside, Suite 1010, Spokane, WA 99201</p> <p>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-20. Again, the Spokane River DO TMDL Implementation Advisory Committee is developing a Water Quality Trading Framework that will clarify the use of pollutant trading, including offsets. The Framework will address all aspects of trading, from what qualifies as a trade, how Ecology will track trades, and how Ecology will determine compliance using credits obtained from pollutant trading.</p> <p>Ecology plans to recognize the use of trading, including offsets, as a means to comply with a Permittee's final water quality based effluent limits.</p> <p>PH-21. See response to PH-17 and PH-20.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="216 272 982 1356"> <p>1 students. Thank you.</p> <p>2 THE HEARINGS OFFICER: Thank you. Sean Hackett</p> <p>3 followed by Julie Dalsaso.</p> <p>4 MR. SEAN HACKETT: Hello. My name is Sean Hackett.</p> <p>5 I'm also here on behalf of the Gonzaga University Department</p> <p>6 of Law Clinic. Submitting these comments on behalf of</p> <p>7 Kootenai Environmental Alliance, the Lands Council, and the</p> <p>8 Spokane Riverkeeper. I live at 923 East Augusta Avenue here</p> <p>9 in Spokane.</p> <p>10 My comments tonight discuss, first of all, the fact</p> <p>11 that draft permits do not contain sufficient conditions</p> <p>12 requiring compliance with State and Tribal water quality</p> <p>13 standards. And second, the, there are certain effluent</p> <p>14 limitations contained within the draft permits that fail to</p> <p>15 fulfill the Clean Water Act's technology force and</p> <p>16 objectives.</p> <p>17 With respect to the first issue, the Clean Water Act</p> <p>18 prohibits Ecology from issuing permits that do not clearly</p> <p>19 and unambiguously impose conditions to ensure compliance</p> <p>20 with the applicable water quality standards of all affected</p> <p>21 states. In the context of the Spokane River, that means</p> <p>22 that these permits must contain conditions with respect to</p> <p>23 not only Washington State's surface water quality standards</p> <p>24 but also the Spokane Tribe of Indians water quality</p> <p>25 standards.</p> </div> <div data-bbox="132 1114 210 1140">PH-22</div> <div data-bbox="264 1352 978 1412"> <p>SPOKANE REPORTING SERVICE, INC. 20 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-22. See response to comments PH-7 and PH-9. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River and Lake Spokane; and specifically addresses the multiple 303(d) listings of the Spokane River and Lake Spokane.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-23</div> <div>1 Unfortunately, these draft permits are deficient in</div> <div>2 this regard. Not only do the permits fail to clearly</div> <div>3 establish conditions designed to ensure compliance with the</div> <div>4 State surface water quality standards, but the permits,</div> <div>5 themselves, are completely devoid of any discussion of</div> <div>PH-24</div> <div>6 Tribal water quality standards. And to the extent that fact</div> <div>7 sheets discuss Tribal water quality standards, that's</div> <div>8 irrelevant. Because the information contained within the</div> <div>9 fact sheet is not an enforceable current condition.</div> <div>10 Not only is this problematic because it seriously</div> <div>11 calls into question the legal sufficiency of these permits,</div> <div>PH-25</div> <div>12 but it leaves the public uncertain as to whether these</div> <div>13 permits will be sufficiently protective of one of our</div> <div>14 community's most prized resources, the Spokane River.</div> <div>15 In order to cure this deficiency and allay concerns of</div> <div>PH-26</div> <div>16 the public, permits should be revised to include language</div> <div>17 that explicitly requires dischargers to comply with</div> <div>18 applicable State and Tribal water quality standards,</div> <div>19 including an explicit reference and a duty to comply with</div> <div>20 40 Code Federal Regulation Section 122.44(d)(1). We would</div> <div>21 recommend that this provision be located within the</div> <div>22 discharge limitation sections of each of the permits and</div> <div>23 appropriately throughout the remainder of the permits.</div> <div>PH-27</div> <div>24 Second issue, the draft permits' effluent limitation</div> <div>25 do not fulfill the Clean Water Act's technology enforcing</div> </div> <div> <div>SPOKANE REPORTING SERVICE, INC.</div> <div>421 W. Riverside, Suite 1010, Spokane, WA 99201</div> <div>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</div> <div>21</div> </div>	<p>PH-23. Ecology disagrees. See response to comments PH-7 and PH-8.</p> <p>PH-24. For PCBs, the draft Spokane River PCB TMDL fully describes the analysis for meeting tribal water quality standards. At this point in time, Ecology believe PCBs are the only pollutants that cause and contribute to water quality criteria exceedences of the Spokane Tribe of Indian waters.</p> <p>PH-25. See response to comments PH-7 and PH-8.</p> <p>PH-26. Ecology believes the permit complies with 40 CFR Part 122.44(d)(1); the requirement that NPDES permits must include limitations to meet State Water Quality Standards, including narrative standards conditions.</p> <p>The permit includes limits that will protect State and Tribal receiving water criteria; and specifically addresses the multiple 303(d) listings of the Spokane River and Lake Spokane. The permit includes water quality based effluent limits for metals (cadmium, lead and zinc), and dissolved oxygen demanding pollutants (CBOD, ammonia and total phosphorus).</p> <p>The final permit also includes a PCB effluent limit. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, take definitive first steps to bring both State and Tribal waters into compliance with PCB receiving water criteria.</p> <p>PH-27. The Clean Water Act directed EPA to develop standards of performance (effluent limitations) for industrial categories, which included the following:</p> <p>BPT - Best Practicable control Technology currently available - applicable to conventional pollutants - to be achieved by July 1, 1977;</p> <p>BCT - Best Conventional pollutant control Technology (BCT) - the level of treatment that succeeds BPT for conventional pollutants. The deadline for achieving BCT was July 1, 1984 but was changed in the 1987 CWA amendments to March 31, 1989</p> <p>-continued on next page-</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-23</div> <div>1 Unfortunately, these draft permits are deficient in</div> <div>2 this regard. Not only do the permits fail to clearly</div> <div>3 establish conditions designed to ensure compliance with the</div> <div>4 State surface water quality standards, but the permits,</div> <div>5 themselves, are completely devoid of any discussion of</div> <div>PH-24</div> <div>6 Tribal water quality standards. And to the extent that fact</div> <div>7 sheets discuss Tribal water quality standards, that's</div> <div>8 irrelevant. Because the information contained within the</div> <div>9 fact sheet is not an enforceable current condition.</div> <div>10 Not only is this problematic because it seriously</div> <div>11 calls into question the legal sufficiency of these permits,</div> <div>PH-25</div> <div>12 but it leaves the public uncertain as to whether these</div> <div>13 permits will be sufficiently protective of one of our</div> <div>14 community's most prized resources, the Spokane River.</div> <div>15 In order to cure this deficiency and allay concerns of</div> <div>PH-26</div> <div>16 the public, permits should be revised to include language</div> <div>17 that explicitly requires dischargers to comply with</div> <div>18 applicable State and Tribal water quality standards,</div> <div>19 including an explicit reference and a duty to comply with</div> <div>20 40 Code Federal Regulation Section 122.44(d)(1). We would</div> <div>21 recommend that this provision be located within the</div> <div>22 discharge limitation sections of each of the permits and</div> <div>23 appropriately throughout the remainder of the permits.</div> <div>PH-27</div> <div>24 Second issue, the draft permits' effluent limitation</div> <div>25 do not fulfill the Clean Water Act's technology enforcing</div> </div> <div> <div>SPOKANE REPORTING SERVICE, INC.</div> <div>421 W. Riverside, Suite 1010, Spokane, WA 99201</div> <div>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</div> <div>21</div> </div>	<div>-continued from previous page-</div> <div>PH-27 (con'd). BAT - Best Available Technology economically achievable - applicable to toxic pollutants. The deadline for achieving BAT was July 1, 1983 but was changed by the 1987 CWA amendments to March 31, 1989.</div> <div>Performance standards also include new source performance standards (NSPS) for new direct dischargers and pretreatment standards for existing indirect dischargers (PSES) and new indirect dischargers (PSNS).</div> <div>Others have characterized the Clean Water Act as a 'technology forcing statute' in that the Act mandated implementation of the above technologies for industrial discharges. However, Ecology has not interpreted these technology based requirements as meaning that dischargers must continually achieve and improve pollution reduction practices, implemented by more stringent permit limits at each permit renewal.</div>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="138 337 212 391">PH-27 (con'd)</div> <div data-bbox="216 302 924 483"> <p>1 objectives. As you're aware, the Clean Water Act has been 2 characterized as a technology forcing statute because of the 3 increasingly rigorous demands that it imposes on dischargers 4 to continually achieve and improve pollution reduction 5 practices.</p> </div> <div data-bbox="138 639 212 664">PH-28</div> <div data-bbox="216 505 924 729"> <p>6 Unfortunately, a review of the discharge monitoring 7 reports submitted by Inland Empire Paper Company and Kaiser 8 demonstrates that certain technology based effluent 9 limitations contained within the draft permits provide these 10 facilities with little to no incentives to improve their 11 pollution reduction efforts.</p> </div> <div data-bbox="138 1013 212 1037">PH-29</div> <div data-bbox="216 748 924 1138"> <p>12 The DMRs indicate that actual discharges from these 13 facilities during high flow season months between January 14 2008 and March 2010 are substantially less than the 15 technology based effluent limitations contained within the 16 draft permits for these facilities. For example, with, 17 Kaiser's draft permit sets a limit for total suspended 18 solids at 1,142 pounds per day maximum daily, where the DMR 19 indicates that Kaiser's maximum daily discharge rarely 20 exceeds 500 pounds per day. That suggests that these limits 21 are nearly twice as high as they need to be.</p> </div> <div data-bbox="216 1157 924 1304"> <p>22 Similarly, Inland Empire Paper Company's effluent 23 limits for biological oxygen demand and total suspended 24 solids far exceed what the facility is actually discharging. 25 Our written comments will go into greater detail and provide</p> </div> <div data-bbox="266 1352 974 1409"> <p>SPOKANE REPORTING SERVICE, INC. 22 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-28. EPA technology based limitations provides consistent effluent limits for like industrial categories. These limits create a level playing field on a regional, State, and National level. Setting more stringent performance based limits provides an economic disadvantage to facilities which have invested to upgrade/install more advanced wastewater treatment technology compared with other like facilities which have not invested to upgrade their treatment facilities.</p> <p>In other words, setting more stringent limits than the federal technology based effluent guidelines punishes facilities performing well (those who have invested to improve treatment technology); and rewards those facilities performing poorly (those who have not invested to improve treatment technology).</p> <p>PH-29. See response to comment PH-28.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="216 269 982 1352" data-label="Text"> <p>1 the calculations where we arrived at these numbers.</p> <p>2 But the most egregious limit that we were able to</p> <p>3 identify on IEP's permit was the limit for total suspended</p> <p>4 solids. Which the permit sets the maximum daily limit at</p> <p>5 8,938 pounds per day, while the facility's actual discharge</p> <p>6 between March 2008 and March 2010 during high flow months</p> <p>7 was roughly only about 849 pounds per day. This suggests</p> <p>8 that these limits are nearly 10 times higher than they</p> <p>9 should be.</p> <p>10 Given the substantial amount of room that these two</p> <p>11 facilities, IEP and Kaiser, have to grow into the permit</p> <p>12 limits, these limitations cannot possibly represent the best</p> <p>13 pollution control technology for pollution practices. In</p> <p>14 order to fulfill the Clean Water Act's technology forcing</p> <p>15 objective, not only should all these permits - not only</p> <p>16 should all these technology based effluent limitations be</p> <p>17 more stringent than those contained in previous iterations</p> <p>18 of these permits, but those limits should be sufficiently</p> <p>19 stringent so as to not only incentivize improved pollution</p> <p>20 prevent measures but to force it.</p> <p>21 Just a couple more general comments. The permits for</p> <p>22 Liberty Lake, City of Spokane and IEP all allow for</p> <p>23 increased flows. We'd like Ecology to demonstrate and</p> <p>24 ensure that water quality's adequate to protect existing</p> <p>25 uses. And we'd also like an explanation of how these</p> </div> <div data-bbox="136 727 210 753" data-label="Text"> <p>PH-30</p> </div> <div data-bbox="136 953 210 979" data-label="Text"> <p>PH-31</p> </div> <div data-bbox="266 1352 976 1409" data-label="Page-Footer"> <p>SPOKANE REPORTING SERVICE, INC. 23 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<div data-bbox="1062 245 1976 378" data-label="Text"> <p>PH-30. Ecology set the technology based limits in the permit based on best professional judgment, Best Conventional Technology (BCT), Best Available Technology (BAT), and New Source Performance Standards (NSPS). See response to comments PH-29 and PH-30.</p> </div> <div data-bbox="1062 402 1686 435" data-label="Text"> <p>PH-31. See response to comments PH-29 and PH-30.</p> </div>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-32</div> <div> <p>1 increased flows will be consistent with the state's</p> <p>2 anti-degradation policy.</p> <p>3 And just a quick, quick note on IEP's permit. They</p> <p>4 lack internal limits for ammonia, CBOD. And they also don't</p> <p>5 contain achievement dates for certain interim limits.</p> <p>6 Thank you for your time.</p> <p>7 THE HEARING OFFICER: Thank you.</p> <p>8 Julie Dalsaso.</p> <p>9 MS. JULIE DALASO: Good evening. My name is Julie</p> <p>10 Dalsaso, Coeur d'Alene, Idaho. I want to speak in general</p> <p>11 terms and leave the details to the science experts in the</p> <p>12 room.</p> <p>13 Thanks for the opportunity to share my concerns about</p> <p>14 discharge permits on the Spokane River. The experience I've</p> <p>15 gained regarding opportunities to improve water quality on</p> <p>16 the Spokane River have been worthwhile. Some of them have</p> <p>17 been learned through the grant that Department of Ecology</p> <p>18 provided with the Spokane River Forum. And I really</p> <p>19 appreciated those gatherings.</p> <p>20 Yet the processes are quite different in terms of the</p> <p>21 TMDL phosphorus dischargers in my experience on the Idaho</p> <p>22 side and the Avista dam licensing processes. However, what</p> <p>23 remains similar is a long arduous process to finalize the</p> <p>24 permit regulations. The differed time in gathering data for</p> <p>25 possible modeling future consequences, industry versus</p> </div> </div> <div> <p>SPOKANE REPORTING SERVICE, INC. 24</p> <p>421 W. Riverside, Suite 1010, Spokane, WA 99201</p> <p>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-32. As stated in WAC 173-201A-300, the purpose of the State's antidegradation policy is to:</p> <ul style="list-style-type: none"> •Restore and maintain the highest possible quality of the surface waters of Washington. •Describe situations under which water quality may be lowered from its current condition. •Apply to human activities that are likely to have an impact on the water quality of surface water. •Ensure that all human activities likely to contribute to a lowering of water quality, at a minimum, apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). •Apply three Tiers of protection (described below) for surface waters of the state. <p>Tier I ensures existing and designated uses are maintained and protected and applies to all waters and all sources of pollutions. Tier II ensures that waters of a higher quality than the criteria assigned are not degraded unless such lowering of water quality is necessary and in the overriding public interest. Tier II applies to new or expanded actions regulated by Ecology with measurable impacts to receiving water quality. Tier III prevents the degradation of waters formally listed as "outstanding resource waters," and applies to all sources of pollution.</p> <p>This facility must meet Tier I requirements described above. The permit protects and maintains beneficial uses through implementation of numeric and non-numeric permit limits that prevent additional loading of pollutants of concern (phosphorus, CBOD, ammonia, and total PCBs). The permit further takes appropriate and definitive steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for both dissolved oxygen and PCBs.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-33</div> <div> <p>1 health impacts analysis, and the opportunity for citizen</p> <p>2 input about the Spokane River water quality from a bistate</p> <p>3 perspective.</p> <p>4 As an opportunist and thrifty individual by nature, I</p> <p>5 see that now is the time to reinforce analysis and</p> <p>6 regulation for the package of pollutants impacting the</p> <p>7 Spokane River. Not merely phosphates but also PCB-like</p> <p>8 substances, PCBs, hydrocarbons and dioxins, apparently</p> <p>9 traced to the water, or to the waste to energy incinerator.</p> <p>10 Tonight we see valuable resources allocated for an</p> <p>11 optimal outcome. But can we afford to partially do the job</p> <p>12 and avoid review of the full range of pollutants. The</p> <p>13 identified four polluters need discharge permits for the</p> <p>14 full range of pollutants, nothing less.</p> <p>15 Before lawsuits arose from the Idaho's municipal</p> <p>16 wastewater dischargers with the TMDL plan ultimately was</p> <p>17 stall tactics and deferred enforcement dates made the end</p> <p>18 point of the discharge permitting process seem highly</p> <p>19 unlikely. It just seems to wear everybody down while the</p> <p>20 health of the river continues to degrade.</p> <p>21 Given the legal implications, concrete timelines seem</p> <p>22 more and more elusive. Given these complications, the</p> <p>23 discharge permitting process addressed tonight means we need</p> <p>24 to be inclusive and get back on track to look at the impact</p> <p>25 of PCBs and other pollutants in a meaningful comprehensive</p> </div> </div> <div> <p>SPOKANE REPORTING SERVICE, INC. 25</p> <p>421 W. Riverside, Suite 1010, Spokane, WA 99201</p> <p>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</p> </div>	<p>PH-33. Ecology believes the permit does address all pollutants that may impair receiving water quality criteria, including metals (zinc, lead, cadmium), dissolve oxygen demanding pollutants (CBOD, ammonia and total phosphorus), and PCBs.</p> <p>PH-34. See response to comment PH-33.</p> <p>PH-35. See response to comment PH-33.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div> <div>PH-35 (con'd)</div> <div> 1 method versus fragmenting our sights on merely the 2 phosphates. 3 4 Lastly, though I'm not a scientist and have more of a 5 human health focus as a health care professional, data used 6 to derive predictions from modeling needs to be current and 7 objective. Garbage in, garbage out. There are concerns 8 that data is unreliable that was used, outdated and possibly 9 skewed to achieve justifiable pollution. Only the experts 10 can review the data for clear objective findings. Plus, 11 with time and both industry and population increases in 12 effluent loads into Spokane River, projections need to be 13 considered of the future loads. 14 15 Thank you. 16 17 THE HEARINGS OFFICER: Thank you. 18 19 Does anybody else wish to comment at this time? 20 21 (No response) 22 23 Okay. Well, the formal hearing does not end until 24 9:00 o'clock. So for those of you who wish to go, please do 25 so. But we'll be hanging around until 9:00 to make sure all 26 testimony is recorded in. Thank you. 27 28 (7:40 p.m.) 29 30 THE HEARINGS OFFICER: So let the record show 31 testimony ended at 7:40 p.m. No other people wishing to 32 testify have shown up to testify since that time. And so 33 we're gonna be closing the hearing now. If you would like </div> </div> <div> SPOKANE REPORTING SERVICE, INC. 26 421 W. Riverside, Suite 1010, Spokane, WA 99201 (509) 624-6255 (800) 759-1564 www.spokanereportingservice.com </div>	<p>PH-36. Ecology believes the DO model provides a reasonable representation of the key processes affecting dissolved oxygen in the Spokane River and Lake Spokane.</p> <p>PH-37. Ecology developed the WLAs for oxygen demanding pollutants considering future flows for both the municipal and industrial dischargers.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="216 269 982 1352"> <div>1 to email or send written comments, they must be submitted by</div> <div>2 5:00 p.m. on November 17, 2010. Submitted to Water Quality</div> <div>3 Permit Coordinator at the Washington State Department of</div> <div>4 Ecology, 4601 North Monroe Street in Spokane, Washington,</div> <div>5 99205.</div> <div>6 All testimony received at this hearing, along with any</div> <div>7 written comments submitted by 5:00 p.m. on November 17th</div> <div>8 will be part of the official record for these four draft</div> <div>9 permits.</div> <div>10 After the comment period, Ecology staff will review</div> <div>11 all comments submitted and prepare a response. The</div> <div>12 responsiveness summary will be a part of the permit, which</div> <div>13 will be available online.</div> <div>14 On behalf of the Department of Ecology, we thank you</div> <div>15 for coming. I appreciate your concern and cooperation and</div> <div>16 courtesy. Let the record show this hearing was adjourned at</div> <div>17 8:50 p.m.</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div data-bbox="264 1352 974 1411"> <div>SPOKANE REPORTING SERVICE, INC. 27</div> <div>421 W. Riverside, Suite 1010, Spokane, WA 99201</div> <div>(509) 624-6255 (800) 759-1564 www.spokanereportingservice.com</div> </div>	

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM


RESPONSES


1 STATE OF WASHINGTON)
2 : ss: REPORTER'S CERTIFICATE
3 COUNTY OF SPOKANE)

4 I, Rita A. Ketz, a notary public
5 in and for the State of Washington, do hereby certify:
6 That the foregoing Public Hearing
7 was taken on the date and at the time and place as shown on
8 Page 1 hereto;

9 That the foregoing is a true and
10 correct transcription of my shorthand notes of the Public
11 Hearing transcribed by me or under my direction;

12
13
14 WITNESS my hand this
15 20th day of November 2010.

16
17 
18 RITA KETZ
19 CCR No. 2136,
20 Notary Public in and for the
21 State of Washington, residing
22 at Spokane.
23
24
25


COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM	RESPONSES
<div data-bbox="205 293 441 406">  <div> SIERRA CLUB <small>FOUNDED 1892</small> </div> </div> <div data-bbox="567 308 917 341"> Upper Columbia River Group </div> <div data-bbox="669 352 917 401"> Box 413 Spokane, Washington 99210 </div> <hr/> <p>November 17, 2010</p> <p>Permit Coordinator Washington State Department of Ecology Eastern Regional Office 4601 N. Monroe St. Spokane, WA 99205</p> <p>Re: Comments on Draft NPDES Permits for Kaiser Aluminum Fabricated Products, LLC (Permit No. WA-0000892) City of Spokane Riverside Park Water Reclamation Facility and CSOs, and Spokane County (Pretreatment Program) (Permit No. WA-002447-3) Inland Empire Paper Co. (Permit No. WA-0000892-5) Liberty Lake Sewer and Water District (Permit No. WA-0045144)</p> <p>SENT VIA EMAIL (stra461@ecy.wa.gov)</p> <p>Dear Permit Coordinator,</p> <p>These comments are submitted on behalf of the Upper Columbia River Group of the Sierra Club (Sierra Club), on the Department of Ecology's four draft Spokane River NPDES permits, in particular the draft NPDES permits for Liberty Lake Sewer and Water District, the City of Spokane, Kaiser Aluminum, and Inland Empire Paper (IEP). Please include these comments as part of the administrative record for all four draft NPDES permits. Please also include, by reference, our comment letter dated November 13, 2007, including attachments, on prior drafts of these four permits.</p> <p>Sierra Club has dedicated significant time and resources to protect and restore the Spokane River, including participation in all aspects of the development of the TMDLs for the Spokane River. Sierra Club interests include protection of public health, restoration of wild redband trout populations, protection and enhancement of public use of Riverside State Park (including elimination of noxious odors in the Park and downstream of City of Spokane's sewage treatment plant), and achievement of a healthy river that benefits Spokane's economy and quality of life.</p> <p>These permits are important steps toward implementing these TMDLs. Accordingly, we would like to continue to work closely with Ecology toward the finalization of these permits. There is no question that sewage and industrial discharges are among the greatest threats to these goals. Therefore, it is imperative that the Washington Department of Ecology and the U.S. Environmental Protection Agency issue NPDES permits that are fully protective of the public interest and designed to achieve water quality standards in the near term. The lengthy delays in adoption of appropriate TMDLs and administrative extensions of these permits make it all the more important that the responsible agencies "get it right".</p> <p>The Spokane River is listed on Washington's §303(d) list for a number of parameters, including dissolved oxygen, total dissolved gas, PCBs, temperature, and dioxin. Designation of a waterbody pursuant to § 303(d) means that current wastewater technologies and other pollution control activities, such as Best Management Practices (BMPs) for non-point sources, are insufficient to protect the health of the River and that more stringent measures must be applied to meet water quality standards. 33 U.S.C. §§ 1313(d),</p>	<p>SC-1. Ecology will consider comments received on this permit during this public comment period only.</p>

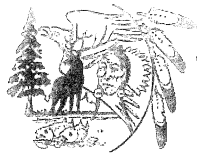
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<p>SC-2 1329; 40 C.F.R. § 130.7. As a result, Ecology must ensure that these permits include effluent limits for PCBs, ammonia, phosphorus, temperature, dioxin, CBOD, and other parameters that will be protective of Washington's and the Spokane Tribe's water quality standards.</p> <p>Before proceeding with the comments, it must be noted that Sierra Club has substantial concern with the draft dissolved oxygen TMDL, which these permits reference. Sierra Club has submitted substantial comments on the draft TMDLs. The Idaho dischargers have challenged the final dissolved oxygen TMDL. If significant alterations are made to the DO TMDL, Sierra Club specifically requests that Ecology resubmit the NPDES permits for public review and comment. This would allow the public to review the permits in light of the most up-to-date information and any revisions to the TMDL.</p> <p>SC-3</p> <p>(1) Comments on All Four Permits</p> <p>SC-4 (1.1) All permits need to be based on the CeQual model for establishing critical river conditions for permit limit calculations in the river during the 1-in-10 year flow year of 2001.</p> <p>SC-5 (1.2) All permits must use end-of-pipe water quality-based limits for PCB until a TMDL assigns a WLA in an approved TMDL. NPDES permits should not use technology-based limits or BMPs.</p> <p>SC-6 (1.3) Critical river conditions for all permittees must be based on the 2001 parameters estimated from the 2001 calibrated CeQual model for the segment at the discharge point. Those WQ conditions are the best estimate of critical parameters present during a 1 in 10 year flow condition at that location.</p> <p>(2) Kaiser Aluminum Fabricated Products, LLC (Permit No. WA-0000892)</p> <p>SC-7 (2.1) Kaiser needs separately monitor PCBs in the process stream and groundwater to prevent dilution and to provide more reliable results.</p> <p>SC-8 (2.2) The use of WQ data from the Spokane River at Riverside State Park is erroneously used to characterize the Spokane River during critical conditions at the Kaiser discharge. This is not appropriate and is misleading.</p> <p>(3) Liberty Lake Sewer and Water District (Permit No. WA-0045144)</p> <p>(3.1) The Liberty Lake design criteria (as with Spokane's) have not been confirmed to be able to achieve WQ criteria at design flow or to comply with Tier 2 Antidegradation requirements. Although there were known WQ problems with discharge expansion several years ago, the expansion was approved anyway.</p> <p>(3.2) Liberty Lake should receive interim performance-based limits to prevent further degradation of the Spokane River and Lake Spokane until such time as DO TMDL implementation demonstrates improvements in water quality.</p> <p>(4) Inland Empire Paper Co. (Permit No. WA-0000892-5)</p> <p>(4.1) Pollutants in the waste stream and listed in the 303(d) list such as PCBs must have limits in the permit. If there is no WLA for the discharge in an approved TMDL, then there is no allowable mixing zone - and end-of-pipe WQ-based limits must be applied.</p> <p>(4.2) Critical conditions used for Temperature and pH limit evaluation are not well explained in the draft permit. Calculations need to show how the allowable maximum incremental changes were addressed for both parameters.</p> <p>(4.3) Monitoring frequencies used to calculate permit limits are not the same as required in the permit. They must conform. No justification of the effluent data set transformation or autocorrelation values is given.</p>	<p>SC-2. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River; and specifically addresses the multiple 303(d) listings of the Spokane River. The permit includes water quality based effluent limits for metals (cadmium, lead and zinc), and dissolved oxygen demanding pollutants (CBOD, ammonia and total phosphorus). The final permit also contains a PCB limit. As explained in the fact sheet, Ecology has also required the Permittee to identify and remove PCBs within their wastewater treatment and collection systems. In the final permit, Ecology has also incorporated by reference the 2004 Agreed Order to make the Public aware of the Permittee's PCB source identification and control responsibilities.</p> <p>SC-3. Comment noted. If Ecology revises the WLAs in the Spokane River DO TMDL, Ecology will make available for public review and comment any subsequent revisions to the Spokane River permits.</p> <p>SC-4. Critical flows used to set permit limits varied by the pollutant. Ecology used the 1 in 10 low flow of year 2001 to set water quality based limits for phosphorus, CBOD, and ammonia to protect receiving water dissolved oxygen criteria. For other parameters, Ecology determines compliance with aquatic life criteria using the 7Q10 river flow (7 day low flow with a reoccurrence probability of 10 years); human health criteria using the 30Q5 river low flow (30 day low flow with a reoccurrence probability of 5 years); and human health carcinogen criteria using the harmonic mean river flow.</p> <p>SC-5. Ecology will not include an end-of-pipe limit for PCBs in this permit. The PCB limit at the black walnut shell filters, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p> <p>SC-6. See response to comment SC-4.</p> <p style="text-align: right;">-continued on next page-</p>

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<p>SC-2 1329; 40 C.F.R. § 130.7. As a result, Ecology must ensure that these permits include effluent limits for PCBs, ammonia, phosphorus, temperature, dioxin, CBOD, and other parameters that will be protective of Washington's and the Spokane Tribe's water quality standards.</p> <p>Before proceeding with the comments, it must be noted that Sierra Club has substantial concern with the draft dissolved oxygen TMDL, which these permits reference. Sierra Club has submitted substantial comments on the draft TMDLs. The Idaho dischargers have challenged the final dissolved oxygen TMDL. If significant alterations are made to the DO TMDL, Sierra Club specifically requests that Ecology resubmit the NPDES permits for public review and comment. This would allow the public to review the permits in light of the most up-to-date information and any revisions to the TMDL.</p> <p>SC-3</p> <p>(1) Comments on All Four Permits</p> <p>SC-4 (1.1) All permits need to be based on the CeQual model for establishing critical river conditions for permit limit calculations in the river during the 1-in-10 year flow year of 2001.</p> <p>SC-5 (1.2) All permits must use end-of-pipe water quality-based limits for PCB until a TMDL assigns a WLA in an approved TMDL. NPDES permits should not use technology-based limits or BMPs.</p> <p>SC-6 (1.3) Critical river conditions for all permittees must be based on the 2001 parameters estimated from the 2001 calibrated CeQual model for the segment at the discharge point. Those WQ conditions are the best estimate of critical parameters present during a 1 in 10 year flow condition at that location.</p> <p>(2) Kaiser Aluminum Fabricated Products, LLC (Permit No. WA-0000892)</p> <p>SC-7 (2.1) Kaiser needs separately monitor PCBs in the process stream and groundwater to prevent dilution and to provide more reliable results.</p> <p>SC-8 (2.2) The use of WQ data from the Spokane River at Riverside State Park is erroneously used to characterize the Spokane River during critical conditions at the Kaiser discharge. This is not appropriate and is misleading.</p> <p>(3) Liberty Lake Sewer and Water District (Permit No. WA-0045144)</p> <p>(3.1) The Liberty Lake design criteria (as with Spokane's) have not been confirmed to be able to achieve WQ criteria at design flow or to comply with Tier 2 Antidegradation requirements. Although there were known WQ problems with discharge expansion several years ago, the expansion was approved anyway.</p> <p>(3.2) Liberty Lake should receive interim performance-based limits to prevent further degradation of the Spokane River and Lake Spokane until such time as DO TMDL implementation demonstrates improvements in water quality.</p> <p>(4) Inland Empire Paper Co. (Permit No. WA-0000892-5)</p> <p>(4.1) Pollutants in the waste stream and listed in the 303(d) list such as PCBs must have limits in the permit. If there is no WLA for the discharge in an approved TMDL, then there is no allowable mixing zone - and end-of-pipe WQ-based limits must be applied.</p> <p>(4.2) Critical conditions used for Temperature and pH limit evaluation are not well explained in the draft permit. Calculations need to show how the allowable maximum incremental changes were addressed for both parameters.</p> <p>(4.3) Monitoring frequencies used to calculate permit limits are not the same as required in the permit. They must conform. No justification of the effluent data set transformation or autocorrelation values is given.</p>	<p>-continued from previous page-</p> <p>SC-7. Kaiser measures PCBs at their final discharge point (Outfall 001). This outfall includes both process/non-contact cooling water (Outfall 006) and a ground water remediation flows. Kaiser uses an ultra low level analytical method that routinely detects PCBs at Outfall 001. This method provides reliable PCB results for the combined waste streams.</p> <p>SC-8. In the draft permit, Ecology used Spokane River alkalinity data from Ecology's long term ambient monitoring station at Riverside State Park (an approximate lowest value from the dataset of 50 mg/L as CaCO₃). At the time, the permit writer found no alkalinity data on the upper portions of the River from Ecology's ambient monitoring network.</p> <p>Based on this comment, Ecology checked the availability of alkalinity data on the upper portions of the Spokane River in Ecology's Environmental Information Management System (EIM) database. The permit writer found multiple data points for alkalinity and estimated a 90th percentile low value of 18 mg/L as CaCO₃. Using this new alkalinity value resulted in no change to the reasonable potential determination.</p>

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<p>(4.4) WQ-based arsenic limits now need to be implemented after more than 10 years of delay.</p> <p>(4.5) Final limits for oxygen demanding pollutants must be placed in the permit and the compliance schedule cannot exceed 5 years in the permit. Any interim limits and compliance schedule exceeding the 5-year maximum permit life must be contained in an administrative order.</p> <p>(4.6) Performance-based limits for interim effluent loading are appropriate for oxygen demanding pollutants, but so long these limits are developed using the correct data evaluation.</p> <p>(4.7) Because implementation of the metals TMDL has been delayed excessively, the metals limits should use end-of-pipe limits as interim until a year of monitoring establishes performance. At that point, most stringent of either performance-based or end-of-pipe limits should become automatically effective per the procedure outlined in the metals TMDL.</p> <p>(4.8) Fecal coliforms are common in undisinfected pulp mill effluent along with opportunistic pathogens. Permit limits consistent with meeting water quality criteria for bacteria must be placed in the permit until quantification of pathogens in IEP effluent is performed by an independent health organization.</p> <p>(4.9) Pulp mill effluent has been well-documented to cause endocrine disruption in fish including rainbow trout, impairing reproductive and other physiological processes. Because a unique native Red-Band Trout population naturally reproduces in the river near the IEP discharge, it is imperative that the effluent not limit this population's recovery which is also being limited by other water pollution and habitat problems. Exposure to pulp mill phytosterols and other chemicals potentially responsible for endocrine disruption may occur for extended periods since it is likely that the warm IEP discharge creates an attractant to fish when the river is coldest in the winter. This pollution impact from IEP discharges must be shown not to cause any toxic effects in the Red-Band Trout population.</p> <p>(5) City of Spokane Riverside Park Water Reclamation Facility and CSOs, and Spokane County (Pretreatment Program) (Permit No. WA-002447-3)</p> <p><u>(5.1) Permit Application</u> The permit application submitted in 2004 is not legally valid or applicable to a 2010 permit. A new permit and evaluation must be submitted on a valid application with up to date effluent characterization.</p> <p><u>(5.2) Permit Compliance</u> There has been documented dry weather raw sewage overflows, citizen lawsuits and settlements pertaining to permit violations. Statements such as contained in the fact sheet section C. on permit compliance is grossly misleading. The compliance schedule of any court order should also be reflected in the permit conditions</p> <p><u>(5.3) Design Criteria – Facility Loading</u></p> <p>(5.3.1) Expansion of the discharge is being permitted as design criteria without an adequate water quality (WQ)-based evaluation at those discharge volumes using the best available river and effluent data representative of critical conditions at design flows. The permit cannot be issued for expanding flows under design criteria without calculating critical conditions, determining reasonable potential, and setting limits under those design criteria flows. If lower flows are being permitted, they must be explicit in the permit. The use of these design flows without the above evaluations for establishing adequate capacity for the City's wastewater treatment in the River is incorrect.</p>	

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<p>(5.3.2) Tier 2 Antidegradation rules must be complied with for new or <i>expanded</i> discharges. There is neither an adequate nor up-to-date evaluation accompanying the newly expanded design flow being permitted.</p> <p>(5.3.3) No dilution zone is allowable for pollutants which already exceed WQ criteria or have a WLA established by a TMDL. End-of-pipe limits must be established for those pollutants such as PCB. It seems impossible to expand discharges to the stated design criteria while at the same time meeting the strict PCB loading limits that will be required under State and Spokane Tribe's water quality standards. The proposed permit, therefore, is not consistent with State and Federal Laws</p> <p>(5.4) <u>Effluent Limits</u></p> <p>(5.4.1) Ecology has a state of art model with extensive instream monitoring calibration data for the critical river condition year of 2001. There is no need to delay permit analyses since all receiving stream parameters used for calculating effluent limits within mixing zones for all Spokane River permits should use the model WQ output data for the river segment at each outfall. It is arbitrary to use data from one sampling effort in 1998 or the non-critical flow year of 2005 to characterize the river for 2010 permits.</p> <p>(5.4.2) There is a discussion of new mixing studies showing better dilution, but no definition of the actual dimension of the mixing zones or justification of new dilution ratios.</p> <p>(5.4.3) Probability dictates that 7Q10 flows are higher than 7Q20 flows. Explanation is need to show how critical conditions flow were calculated.</p> <p>(5.4.4) The dilution factors presented in the text and explained as based on Appendix D does not correspond to those in Appendix C.</p> <p>(5.4.5) Interim limits applied during a compliance schedule must prevent further worsening of WQ criteria violations in the river and lake while final limits are implemented. Therefore, the interim limits must be based on performance for the current discharge, not on technology-based treatment standards which would allow much larger loading than is currently being discharged.</p> <p>(5.4.6) Final Limits that will meet state water quality standards must be incorporated into the permit.</p> <p>(5.4.7) The chlorine limits have no justification presented for inclusion in the permit. There must be a WQ-based evaluation with critical flows. The smell of chlorinated effluent is present in the river past the Bowl and Pitcher within Riverside State Park downstream of the discharge in the summer. These odors violate the aesthetics portion of the WQ narrative criteria and indicate that there are probable toxic concentrations of chlorinated compounds well downstream of the mixing zone. This needs to be controlled by more stringent permit limits for chlorine, including odor. Any expansion of this discharge under these conditions cannot be permitted.</p> <p>(5.4.8) Effluent Limits in the permit are different than those justified in the Fact Sheet.</p> <p>(5.4.9) The critical conditions cited for deriving ammonia limits and citing EPA procedures in Appendix D - <i>Response to Comments</i> have no justification and are not consistent with critical conditions used to justify pH limits. It appears that the monthly limit for ammonia was defined without justification.</p> <p>(5.4.10) The permitted upper pH permit limit sets the critical pH used in the ammonia calculation to protect the river from toxic conditions. It appears that data has been arbitrarily selected to apply at different calculations to develop less stringent limits.</p>	

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<p>(5.4.11) It has been over 15 years since the arsenic issue for limits has been put on delay. Further delay is not warranted or acceptable under the CWA.</p> <p>(5.4.12) It is not clear why comparison of effluent limits is done under Section I of the Fact Sheet. Are these related to groundwater?</p> <p>(5.4.13) Effluent permit limits for CBOD of 30 and 45 don't comply with federal technology-based limits and there is no time period label.</p> <p>(5.4.14) If CBOD technology limits are established, ammonia limits also must be included to prevent the combination of CBOD and NBOD from exceeding the BOD tech-based limits.</p> <p>(5.4.15) It is inexplicable how WQ criteria for Fecal coliform can be met below the treatment plant if both A&B outfalls discharge together with technology-base limits for bacteria while the river is listed for fecal bacteria violations.</p> <p>(5.4.16) Pretreatment program implementation facts for the City and County must be documented as justification that the program will be protective during the term of this permit.</p> <p>Conclusion</p> <p>SC-9 As described above, these four permits have significant deficiencies that must be addressed prior to issuance of final permits. Moreover, in the event that significant changes are made to address these comments, comments of other parties, or as the result of changes to the TMDL that materially alter the permits, Sierra Club requests an opportunity to comment on those changes.</p> <p>SC-10</p> <p>Please do not hesitate to contact me if you have further questions regarding these comments.</p> <p>Sincerely,</p>  <p>John Osborn, MD</p>	<p>SC-9. Ecology believes the permit complies with all applicable Federal and State laws and rules, and contains the necessary conditions to both protect receiving water quality and bring the water back into compliance with applicable standards.</p> <p>SC-10. See response to comment SC-3.</p>

COMMENTS TO NPDES WA-0000892, KAISER ALUMINUM**RESPONSES**

Spokane Tribal Natural Resources
P.O. Box 100 • Wellpinit, WA 99040 • (509) 258-9342 • fax 258-9450

MEMORANDUM

Permit Coordinator
Department of Ecology
4601 N. Monroe
Spokane, WA 99205

RE: Comments on Draft Spokane River NPDES Permits

SENT VIA EMAIL (stra461@ecy.wa.gov) and First-Class Mail

Dear Permit Coordinator:

Please accept these comments on Ecology's four draft Spokane River NPDES permits, which include the Draft Permits for Liberty Lake Sewer and Water District ("Liberty Lake"), the City of Spokane ("Spokane"), Kaiser Aluminum ("Kaiser") and Inland Empire Paper ("IEP"). These comments are submitted on behalf of the Spokane Tribe of Indians ("Tribe") and Tribe's Department of Natural Resources ("DNR"). The Tribe has grave concerns about the four permits in their current form, and strongly opposes their approval as written.

Introduction

The health and well-being of the Spokane River ("River") is a paramount interest of the Tribe. The Tribe is concerned not only with the health of the River within its Reservation, but also with the entirety of the River as it flows through the Tribe's ancestral lands. The Tribe's Reservation was established in 1877, after the Tribe was removed by force from its domain. *Northern Pac. Ry. Co. v. Wismer*, 246 US 283, 288 (1918). The Reservation's southern boundary is set to the south bank of the Spokane River, which was done to protect the Tribe's subsistence and cultural uses of the River. For many decades now, the Tribe's subsistence use of the River has been thwarted by upstream pollution, raised water temperatures, and during certain times of the year portions of the River are uninhabitable for aquatic life due to depressed oxygen levels and high levels of total dissolved gas ("TDG"). Additionally, PCBs and other toxins make fish consumption potentially dangerous to human health and negatively affect the Tribe's use of the River's fishery.

In response to the infringement on the Tribe's fishing, cultural, and agricultural rights in the River, the Tribe applied for and received treatment in the same manner as a state status ("TAS") under the Clean Water Act ("CWA"), 33 U.S.C. § 1377, on July 23, 2002. The Tribe's first water quality standards were approved on April 22, 2003. However, projects to improve water

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<p>quality and control water pollution within the Reservation have not been successful in bringing the River back to health due to upstream pollution and hydropower facilities within the River.</p> <p>Fortunately, for the Tribe, the CWA protects downstream sovereigns in this very situation. The Environmental Protection Agency's ("EPA") regulations require that NPDES permits cannot be issued "when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." 40 C.F.R. § 122.4(d). In addition, downstream Tribes and States are free to adopt more stringent standards than upstream States, and the EPA can require that upstream sovereigns comply with the downstream standards. <i>Albuquerque v. Browner</i>, 97 F.3d 415, 423-24 (10th Cir. 1996); <i>See also Montana v. EPA</i>, 137 F.3d 1135, 1141(9th Cir. 1998). As Ecology is aware, the non-point and point source pollution upstream from Reservation waters causes degradation of the Tribe's water quality. (Final 2010 DO TMDL, P.17). For this reason, the Tribe is very concerned with the permit limits or in some cases lack of permit limits for certain parameters contained in these four draft permits.</p> <p>Unfortunately, improvements in the Tribe's water quality depend almost entirely on improvements upstream. All four of these draft permits, fail to address the major challenges facing the Tribe: low dissolved oxygen during the summer months in portions of the lower arm of the Spokane River and elevated levels of PCBs and other toxins that violate the Tribe's EPA approved water quality standards. The Tribe's goal of preparing Tribal waters for the return of anadromous fish to the Spokane River becomes more and more difficult as some water quality parameters continue on a downward trend due to upstream pollution.</p> <p>Described in detail below are the Tribe's concerns.</p> <p>1. Dissolved Oxygen</p> <p>As Ecology is aware¹, the Tribe's water quality standards are not being met for dissolved oxygen during the critical season in several sections of the Spokane River, in particular the Lower Arm.² Given this failure to meet the Tribe's water quality standards and the fact that the overwhelming majority of oxygen depleting pollutants originate from these four facilities, any discharge from these facilities has the potential to cause and contribute to violations of the Tribe's standards. Accordingly, the Tribe posits here that the compliance schedules as written, and the lack of final winter discharge limits will, if approved, violate 40 C.F.R. § 122.4(d).</p> <p>The following comments address some of the Tribe's specific concerns regarding Ecology's handling of oxygen depleting pollutants in these four permits.</p> <p>a. Compliance Schedules</p> <hr/> <p>¹ DO TMDL at v, 17, 18, C84-88.</p> <p>² Both Ecology and EPA indicate that the Tribe's EPA approved standards may need further interpretation as a reason to ignore the Tribe's standards. Regardless of any interpretation needs, under no circumstances would the Tribe's standards leave portions of the river devoid of <u>ANY</u> oxygen during the critical season, which is the current situation.</p> <p style="text-align: right;">Page 2 of 7</p>	<p>ST-1. Ecology has previously addressed how the Spokane River DO TMDL modeling affects downstream Tribal water quality (see the TMDL's Response to Comments, pages C-84 to C-86). In summary, the DO TMDL focused on DO problems in Lake Spokane, upstream of Long Lake Dam. Nonetheless, the implementation of the TMDL will improve water quality in the Spokane Arm of the river.</p> <p>The Tribal Water Quality Standards do not fully define how dissolved oxygen criteria applies to waters of the Spokane Arm (e.g. treatment as a lake or river, and how natural conditions apply to this stretch). Further, model runs indicate that at the no source scenario (no anthropogenic sources of pollution) dissolved oxygen concentrations will decrease to as low as 1 mg/L in the bottom (stratified) portions of the Spokane Arm. It remains unknown if the TMDL improvements will meet Tribal water quality criteria.</p> <p>Again, Ecology believes the permit includes the limits necessary to protect receiving water quality; and specifically addresses the multiple 303(d) listings of the Spokane River. The permit includes water quality based effluent limits for metals (cadmium, lead and zinc), and dissolved oxygen demanding pollutants (CBOD, ammonia and total phosphorus).</p> <p>The permit includes a PCB limit on the inlet side of the black walnut shell (BWS) treatment system. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. Ecology believes these conditions take the appropriate and definitive first steps to bring the Spokane River (including Tribal waters) into compliance with PCB water quality criteria.</p> <p>ST-2. Presently, Ecology is evaluating an extension of the WLAs for oxygen demanding pollutants into the months of January and February. The compliance point for dissolved oxygen criteria will still remain within Long Lake.</p> <p style="text-align: right;">-continued on next page-</p>

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<p>quality and control water pollution within the Reservation have not been successful in bringing the River back to health due to upstream pollution and hydropower facilities within the River.</p> <p>Fortunately, for the Tribe, the CWA protects downstream sovereigns in this very situation. The Environmental Protection Agency's ("EPA") regulations require that NPDES permits cannot be issued "when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." 40 C.F.R. § 122.4(d). In addition, downstream Tribes and States are free to adopt more stringent standards than upstream States, and the EPA can require that upstream sovereigns comply with the downstream standards. <i>Albuquerque v. Browner</i>, 97 F.3d 415, 423-24 (10th Cir. 1996); <i>See also Montana v. EPA</i>, 137 F.3d 1135, 1141(9th Cir. 1998). As Ecology is aware, the non-point and point source pollution upstream from Reservation waters causes degradation of the Tribe's water quality. (Final 2010 DO TMDL, P.17). For this reason, the Tribe is very concerned with the permit limits or in some cases lack of permit limits for certain parameters contained in these four draft permits.</p> <p>Unfortunately, improvements in the Tribe's water quality depend almost entirely on improvements upstream. All four of these draft permits, fail to address the major challenges facing the Tribe: low dissolved oxygen during the summer months in portions of the lower arm of the Spokane River and elevated levels of PCBs and other toxins that violate the Tribe's EPA approved water quality standards. The Tribe's goal of preparing Tribal waters for the return of anadromous fish to the Spokane River becomes more and more difficult as some water quality parameters continue on a downward trend due to upstream pollution.</p> <p>Described in detail below are the Tribe's concerns.</p> <p>1. Dissolved Oxygen</p> <p>As Ecology is aware¹, the Tribe's water quality standards are not being met for dissolved oxygen during the critical season in several sections of the Spokane River, in particular the Lower Arm.² Given this failure to meet the Tribe's water quality standards and the fact that the overwhelming majority of oxygen depleting pollutants originate from these four facilities, any discharge from these facilities has the potential to cause and contribute to violations of the Tribe's standards. Accordingly, the Tribe posits here that the compliance schedules as written, and the lack of final winter discharge limits will, if approved, violate 40 C.F.R. § 122.4(d).</p> <p>The following comments address some of the Tribe's specific concerns regarding Ecology's handling of oxygen depleting pollutants in these four permits.</p> <p>a. Compliance Schedules</p> <p>¹ DO TMDL at v, 17, 18, C84-88. ² Both Ecology and EPA indicate that the Tribe's EPA approved standards may need further interpretation as a reason to ignore the Tribe's standards. Regardless of any interpretation needs, under no circumstances would the Tribe's standards leave portions of the river devoid of <u>ANY</u> oxygen during the critical season, which is the current situation.</p> <p>Page 2 of 7</p>	<p>ST-2 (con'd). Ecology will need to revise the either the TMDL or permits to incorporate any expanded critical season and new WLAs. Revisions of either the TMDL or permits will require a public notice and comment period.</p>

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<p>ST-3 All four of the Draft NPDES permits contain compliance schedules that fail to comply with federal and state law. IEP and Kaiser state a schedule of compliance as “Ten (10) years after the permit effective date,” and Liberty Lake and Spokane are designated as “No later than March 1, 2018 the Permittee must submit a verification that the selected technology(s) have been installed and are optimally functional and ready to comply with effluent limitations presented in permit conditions S1.B and continuously operating.” All four of these permits fail at meeting the “as soon as possible” criteria for compliance schedules outlined in the EPA regulations. 40 C.F.R. § 122.47(a)(1). Furthermore, they fail to meet Washington State’s own regulations that “such schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the <i>shortest practicable</i> time.” WAC 173-201A-510(4)(a).</p> <p>ST-4 Ecology fails to provide any analysis as to why compliance schedules beyond the 5-year permit term are necessary and thereby fails to comply with their own regulations requiring a “case by case analysis” on the need for compliance schedules. <i>See Id.</i> Instead, Ecology simply concludes that each discharger will receive a 10-year compliance schedule and even mentions the potential for longer compliance schedules. (RCW 90.48.605 could provide 20-year compliance schedules if it is able to survive EPA and court scrutiny). Furthermore, nothing in 40 C.F.R. 122.4 appears to contemplate the conflicts that could arise when an upstream state seeks compliance schedules for its permittees that do not meet the “as soon as possible” standard. Simply put, these permits by attempting to extend compliance schedules beyond the 5-year term of the permit guarantee that as currently written they will not “ensure compliance” with the Tribe’s water quality standards for dissolved oxygen. <i>See</i> 40 C.F.R. § 122.4(d).</p> <p>ST-5 From the Tribe’s perspective the dischargers have been well aware that in the future they would need to decrease or eliminate their discharge of oxygen depleting pollutants and that time has now come. The Dissolved Oxygen TMDL (“DO TMDL”) took Ecology close to 10 years to finalize and during that time the dischargers in essence got a free pass and the River suffered. It is infuriating to the Tribe to consider the possibility that Ecology would give the dischargers another 10 years or more to come into compliance with their waste load allocations as designated by the DO TMDL. These compliance schedules, if necessary, must meet the “as soon as possible” standard and meet Ecology’s own regulations. The Tribe hopes that Ecology will take seriously the lofty goal of the Clean Water Act, “that the discharge of pollutants into navigable waters be <u>eliminated</u>.” 33 U.S.C. § 1251 (emphasis added).</p> <p>b. Winter Discharges</p> <p>ST-7 Throughout the development of the current version of the DO TMDL the Tribe raised the issue of winter discharge limits of oxygen demanding pollutants with EPA and Ecology. Repeatedly the Tribe was told that although the permits may not contain limits on these pollutants, the bypass regulations would severely limit the dischargers’ ability to significantly ramp up the discharge of TP, CBOD, and NH3-N in the off-season. <i>See</i> 40 C.F.R. § 122.41(m). However, the Tribe remains unconvinced that permits with no final limits for the winter months combined with 40 C.F.R. § 122.41(m) provide any protection from significant increases in pollution discharges during those months.</p>	<p>ST-3. The State’s Water Quality Standards allows for schedules of compliance, see WAC 173-201A-510 (4). Compliance schedules “may in no case exceed ten years, and shall generally not exceed the term of any permit”, WAC 173-201A-510 (4)(c).</p> <p>Similar to the Federal Rules which state schedules of compliance “shall require compliance as soon as possible”, the State WQ Standards also specify that “schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the shortest practicable time”, WAC 173-201A-510(4)(a). Ecology has set a 10 year compliance schedule considering the complexities of the dissolved oxygen problem in the Spokane River and the nature of the solution. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final WQBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees will rely on ‘delta elimination’ to meet their final limits. The ‘delta elimination’ options may include an accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. With the uncertainties associated with the treatment technologies and delta elimination options, the Department believes the Permittee needs the 10 year compliance schedule specified in the final permit.</p> <p>ST-4. See response to comment ST-3.</p> <p>ST-5. See response to comments ST-1 and ST-3.</p> <p>ST-6. A definition of ‘pollutants’ is ‘something that pollutes’. Similarly, a definition of ‘pollute’ is ‘to make unfit for or harmful to living things’. In this permit, Ecology has ensured the discharge will meet receiving water quality criteria. Also, the permit will bring the receiving water back into compliance with applicable criteria for dissolved oxygen and eventually PCBs. By issuing this permit, Ecology is implementing the Clean Water Act’s goal ‘that the discharge of <i>pollutants</i> into navigable water be eliminated’.</p> <p>ST-7. See response to comment ST-2.</p>

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RESPONSES

ST-8

As Ecology and EPA are well aware³ sediment oxygen demand (SOD) is an important influence on the Tribe's decreased oxygen levels during the summer months in portions of the Tribe's waters. Ecology and EPA have attempted to blame the SOD issues on the Grand Coulee Dam and fail to consider that without the pollution from upstream the Tribe's SOD problems would be significantly lessened. For example, the Tribe observes in Lake Roosevelt a much better DO picture then in the Lower Arm of the Spokane River during the summer months and this is due to the lack of upstream discharges of oxygen demanding pollutants north of the Tribe's waters in the Columbia River. The Tribe indicated this difference to Ecology in comments on the Draft DO TMDL and this difference was ignored. In short, upstream pollution causes the Tribe's SOD problems and Ecology chose to ignore this during the modeling by failing to model year round TP limits.⁴

The Tribe's modeling as shown below illustrates the significant loading of Tribal waters with TP during the winter months under the current and potential future scenarios.

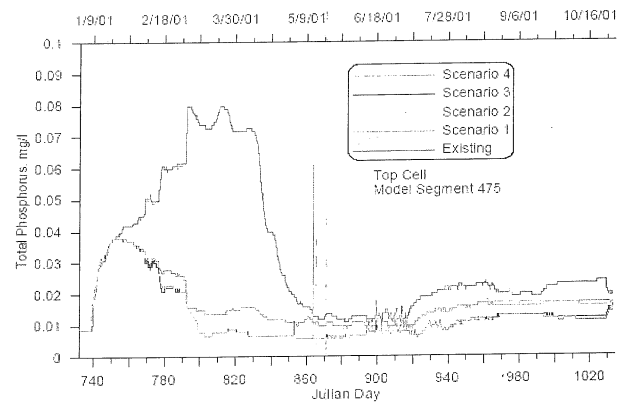



Figure 89. Scenario total phosphorus predictions for surface layer of segment 430 (station SA2).

³ In the DO TMDL Ecology states: "The modeling report also indicates that reducing sediment oxygen demand (SOD) in the Spokane Arm is the single most important factor in improving water quality in the Spokane Arm; and is, in fact, more important than the reductions required by the upstream TMDL. (P. C48). In the EPA approval letter it is stated as "The modeling report also indicates that reducing sediment oxygen demand (SOD) in the Arm is the single most important factor in improving water quality in the Spokane Arm; and is, in fact, more important than the reductions required by the upstream TMDL." (P. 35).

⁴ See Email attached as Exhibit 1.

ST-8. Ecology did not ignore the comments made by the Spokane Tribe of Indians on the draft DO TMDL (see the TMDL's response to comments on pages C-84 to C-88). See response to comment ST-1 and ST-2.

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<p>ST-9 Winter discharges of these pollutants cause and contribute to the Tribe's SOD problem and low DO levels during the critical months. As currently written the Tribe is convinced that the failure to include final year round limits on TP, CBOD, and NH3-N limits will violate 40 C.F.R. § 122.4(d) by failing to ensure that the Tribe's water quality standards will be met. Nutrients, solids and contaminants continue to settle out in Lake Spokane as well as the Lower Arm during the winter months because the Reservoirs remained filled and flows are diminished with high retention times. Ecology and EPA cannot simply assume that all of the extra pollution discharged into the system simply disappears during the winter months.</p> <p>2. PCBs</p> <p>ST-10 As Ecology is aware, these permits must ensure compliance with the Tribe's water quality standards. (Liberty Lake Fact Sheet, P. 12). Unfortunately, these four draft permits fail at even attempting to reduce the PCB discharges from these four facilities and by no means ensure compliance with the Tribe's extremely low limits for PCBs.</p> <p>a. Draft permits lack PCB discharge limits</p> <p>ST-11 The Tribe's current water quality standard for PCBs is 3.37pg/l. As Ecology well understands all four of these facilities, to varying degrees, discharge PCBs into the River.⁵ Furthermore, all of these facilities cause and contribute to the violation of the Tribe's water quality standards for PCBs. As stated in the fact sheet for the Liberty Lake Sewer District: "The draft [PCB] TMDL proposed a loading scenario based on meeting the downstream Spokane Tribe water criterion for PCBs of 3.37 pg/l. This scenario requires a 95% PCB load reduction at the Idaho border, a 97% load reduction in the Little Spokane River, and ≥99% reductions in municipal, industrial, and storm water discharges." (Liberty Lake Fact Sheet, P. 12). Unfortunately, instead of dealing with the legal requirements of NPDES permits, Ecology attempts to avoid the issue.</p> <p>ST-12 First, as stated above 40 C.F.R. § 122.4(d) states with no exception that "No permit may be issued when . . . (d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." The Tribe is considered a State in this instance and all four of these Draft permits utterly fail at ensuring compliance with the Tribe's water quality standards. All of the permits, but one, fail to contain any enforceable numeric limitations and the one that does, Kaiser, is significantly above the Waste Load Allocation within the Draft PCB TMDL with no explanation. (Kaiser Draft Permit, P. 17, compare with Draft PCB TMDL, P. 81).</p> <p>ST-13 As support for failing to put numeric limitations on PCB dischargers, except Kaiser, Ecology cites EPA regulations, which do not support such a decision. Ecology attempts to invoke 40 C.F.R. 122.44(k) which states, "Best management practices (BMPs) to control or abate the discharge of pollutants when: (1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) Authorized</p> <p>⁵ Table 28 contained in the Draft PCB TMDL estimates t-PCB concentrations for discharges from Liberty Lake at 1121pg/l, Kaiser at 1080 pg/l, Inland Empire Paper at 2544 pg/l, and Spokane at 1364 pg/l. Available at http://www.ecy.wa.gov/pubs/0603024.pdf (last visited Oct. 28, 2010).</p> <p>Page 5 of 7</p>	<p>ST-9. Ecology is currently evaluating the need for limits for dissolved oxygen demanding pollutants into January and February. See response to comment ST-2.</p> <p>ST-10. Ecology believes the permit takes appropriate and definitive first steps to bring the Spokane River and Lake Spokane into compliance with water quality criteria for PCBs. See response to comment ST-1.</p> <p>ST-11. Ecology has not avoided the PCB issue in either the draft or final permit. See response to comment ST-1.</p> <p>ST-12. Ecology believes the permit takes appropriate and definitive first steps to bring the Spokane River and Lake Spokane into compliance with water quality criteria for PCBs. See response to comment ST-1.</p> <p>ST-13. The Federal Rule in 40 CFR Part 122.44(k) appears to allow BMPs to control or abate the discharge of pollutants when numeric effluent limitations are infeasible.</p>

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<p>ST-14 under section 402(p) of the CWA for the control of storm water discharges; (3) Numeric effluent limitations are infeasible; or (4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA." However, 122.44(k) offers Ecology no support when it comes to failing to provide WQBELs for PCBs in the permits. Even if Ecology legally could utilize BMPs and other narrative criteria for PCBs these permits would still need to comply with 40 C.F.R. § 122.4(d). Unfortunately, BMPs will not by any measure "ensure compliance with the applicable water quality requirements of all affected States."</p> <p>ST-15 In conclusion, these permits must contain legally enforceable limits on PCB discharges to comply with 40 C.F.R. § 122.4(d) and there is simply no legal reason for Ecology's failure to do so. Although, the Tribe is aware of the political reluctance to deal with PCBs and the difficulties PCB clean-up entails, there simply is no excuse to procrastinate any longer on addressing this pervasive toxin.</p> <p>b. PCB Monitoring Requirements</p> <p>The PCB monitoring requirements are completely inadequate for Spokane and IEP and are inconsistent with the other two permits with no explanation. Both Spokane and IEP have once a quarter testing of final effluent for PCBs while Liberty Lake has once every other month and Kaiser must test twice a month. Given that all of these facilities discharge significant amounts of PCBs that affect downstream water quality, the Tribe recommends requiring all of the facilities to test twice a month for PCBs in their final effluent.</p> <p>Conclusion</p> <p>ST-16 The Tribe has provided comments and input over the many years it has taken to get to this point in cleaning up the River and hopes to see real steps forward in that goal. However, as currently written the Tribe is not convinced that these draft permits move us towards the goal of a healthy and sustainable Spokane River.</p> <p>Sincerely,</p>  <p>B.J. Kieffer Acting Director Spokane Tribal Natural Resources Department</p> <p>Cc: Gregory Abrahamson, Chairman, Spokane Tribe of Indians Dennis McLerran, EPA, Regional Administrator Ted Sturdevant, Ecology, Director Laurie Mann, EPA, Environmental Engineer Brian Crossley, Spokane Tribe, Water and Fish Program Manager Ted C. Knight, Attorney for the Spokane Tribe of Indians</p> <p>Page 6 of 7</p>	<p>ST-14. The permit will take appropriate and definitive first steps in bringing the receiving water back into compliance with receiving water quality criteria for PCBs. See responses to comments ST-1 and ST-13.</p> <p>ST-15. See response to comments ST-1 and ST-13.</p> <p>ST-16. Ecology disagrees and believes the issuance of these permits will result in real steps forward in cleaning up the Spokane River.</p>

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<p>Exhibit 1</p> <p>Email sent by David Moore on 2/26/2009 (emphasis added)</p> <p>Ben and interagency work group.</p> <p>After discussing the hybrid scenario, year round P limits and the swirl of other less recent policy issues, I need to modify my response below (and other Ecology responses on this issue) by stating Ecology feels EPA should refrain from introducing new scenarios this late in the game. We are concerned this complicates our communications with stakeholders and can take us off of our aggressive schedule. In short, we want to lock in to the core scenario and TMDL scenarios we have already discussed and considered as soon as possible and not get sidetracked. We will provide Ecology's position on the numerous policy issues prior to March 25 in order to inform the modeling scenarios but we do not want new scenarios thrown into the mix at this time. Ecology's position on year round P limits is provided below. We feel the former list of modeling scenarios are adequate enough to develop the TMDL and permits. The hybrid and other scenarios may be warranted during TMDL implementation but we need to stay focused on what we have already come up with as a group.</p> <p>Ecology wants to run the model such that the dual-assessment point sets WLA's at the flat 50 rate (background for County) and see if we meet the target at the upstream assessment point. If we do, we can lower the WLA's post modeling to an achievable limit (in WA) in order to provide a MOS and reasonable assurance in the TMDL. This provides more time to answer the question on what is technically achievable. This also allows the Foundational Concepts document and it's suite of delta elimination actions to stay in place but for more feasible nonpoint source reductions.</p> <p>Ecology does not support modeling year round P limits at this time in the absence of quantifiable data but we reserve the right to pursue this if it's found to be necessary upon implementation of the TMDL (i.e., we're not meeting the TP target over the first or second permit cycle). We can do this for other unknown impacts, such as stormwater discharges which are not currently modeled.</p> <p>Thank you for your consideration of these concerns.</p> <p>Dave</p> <p>Page 7 of 7</p>	

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<div data-bbox="205 308 934 446"> <div> <div>Director</div> <div>LARRY A. WEISER</div> </div> <div> <div>Office Manager</div> <div>JULIE CLAAR</div> </div> </div> <div> <div>UNIVERSITY LEGAL ASSISTANCE</div> <div>721 North Cincinnati Street</div> <div>P.O. Box 3528</div> <div>Spokane, Washington 99220-3528</div> <div>Phone (509) 313-5791</div> <div>Facsimile (509) 313-5805</div> <div>TTY (509) 313-3796</div> </div> <div> <div>Supervising Attorneys</div> <div>MICHAEL J. CHAPPELL</div> <div>GEORGE A. CRITCHLOW</div> <div>STEPHEN F. FAUST</div> <div>JENNIFER A. GELLNER</div> <div>GAIL HAMMER</div> <div>JOSHUA J. KANASSATEGA</div> <div>ALAN L. McKEIL</div> <div>TERRENCE V. SAWYER</div> <div>JAMES P. CONNELLY</div> <div>MARK E. WILSON</div> <div>Of Counsel</div> </div>	<div data-bbox="1060 243 1995 414"> <p>SR-1. Ecology believes the permit does include limits that will protect receiving water quality in the Spokane River; and specifically addresses the multiple 303(d) listings of the Spokane River. The permit includes water quality based effluent limits for metals (cadmium, lead and zinc), and dissolved oxygen demanding pollutants (CBOD, ammonia and total phosphorus).</p> </div> <div data-bbox="1060 430 1995 738"> <p>The final permit also sets a PCB limit at the inlet side to the black walnut shell filtration system. Additionally, the Permittee continues to identify and remove PCBs that remain in the wastewater treatment and collection systems (required through an Ecology issued Agreed Order). In the final permit, Ecology has incorporated by reference the 2004 Order to make the Public aware of the Permittee's PCB source identification and control responsibilities. These requirements, in addition to the new requirement to participate in the Spokane River Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River.</p> </div>

SENT VIA EMAIL

November 17, 2010

Permit Coordinator
Department of Ecology
N. 4601 Monroe
Spokane, Washington 99205
stra461@ecy.wa.gov

RE: Comments on Liberty Lake, Inland Empire Paper, the City of Spokane, and Kaiser Aluminum Draft NPDES Permits

Dear Permit Coordinator:

These comments are submitted on behalf of the Spokane Riverkeeper, The Lands Council, the Kootenai Environmental Alliance, and the Gonzaga University Legal Assistance Environmental Law Clinic, regarding the Department of Ecology's draft National Pollutant Discharge Elimination System ("NPDES") permits for Liberty Lake Sewer and Water District ("Liberty Lake"), the City of Spokane ("City"), Inland Empire Paper ("IEP"), and Kaiser Aluminum (collectively referred to as the "Dischargers"). We thank you for this opportunity to provide comments on the four draft permits (collectively referred to as the "Draft Permits"). Please include these comments as part of the administrative record for each of the Draft Permits.

As you know, these groups have dedicated significant time and resources to protect and restore the Spokane River, including participation in all aspects of the development and/or implementation of the DO TMDL. The development of appropriate effluent limits in the Draft Permits is a vital component of both implementing the DO TMDL and increasing the amount of dissolved oxygen in the Spokane River and Lake Spokane. Phosphorus, the nutrient with the greatest effects on dissolved oxygen levels along the Spokane River, accelerates the growth of algae and other aquatic plants. This results in reduced oxygen levels which can be harmful to fish and other aquatic species, outbreaks of toxic blue-green algae blooms which can be harmful to human health, and an increased potential for violations of water quality standards. Accordingly, we would like to continue to work closely with Ecology toward the finalization of these permits.

The Spokane River is listed on Washington's § 303(d) list for a number of parameters, including dissolved oxygen, total dissolved gas, PCBs, temperature, and dioxin. Designation of a waterbody pursuant to § 303(d) of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA" or "the Act") means that current wastewater technologies and other pollution control activities, such as Best Management Practices ("BMPs") for stormwater and/or non-point sources, are insufficient to protect the health of the Spokane River, and that more stringent measures must be applied to meet Washington State water quality standards. 33 U.S.C. §§

SR-1

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<p>November 17, 2010 Draft NPDES Permit Comments Page 2</p> <p>SR-1 (con'd) 1313(d), 1329; 40 C.F.R. § 130.7. As a result, Ecology must ensure that the Draft Permits include effluent limits for PCBs, ammonia, phosphorus, temperature, dioxin, CBOD, and other parameters that will be sufficiently protective of Washington State's, and the Spokane Tribe's, water quality standards.</p> <p>General Comments Applicable to Each of the Draft Permits</p> <p>1. Permit Limits for PCBs must be Water Quality-Based not Technology or Performance Based.</p> <p>Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), requires the imposition of a TMDL where technology-based effluent limitations are not stringent enough to implement any applicable water quality standard. 33 U.S.C. § 1313(d)(1)(A). Moreover, the Act prohibits permits for discharges that cause or contribute to an exceedence of water quality standards. 33 U.S.C. § 1311(b)(1)(c); 40 C.F.R. § 122.44(d); 40 C.F.R. § 122.4; <i>see also</i>, RCW 90.48.520; WAC 173-226-070.</p> <p>In addition to the conditions established under 40 C.F.R. § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable:</p> <p>Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to:</p> <p>(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.</p> <p>40 C.F.R. § 122.44(d)</p> <p>Ecology's draft PCB TMDL¹ indicates that standards are not being met, that each of the Dischargers contributes to the problem, and that drastic reductions in PCBs are required to meet these standards. The draft PCB TMDL states:</p> <p>A PCB loading scenario was proposed based on meeting the Spokane Tribe water criterion for PCBs (3.37 pg/l). The scenario requires a 95% PCB load reduction at the Idaho border, a 97% load reduction in the Little Spokane River, and ≥99% reductions in municipal, industrial, and stormwater discharges.</p> <p>Draft PCB TMDL at 9.</p> <p>SR-3 The Draft Permits ignore the 21 separate studies that made up the draft PCB TMDL, and continue to pretend that PCBs can be addressed via BMPs and further monitoring and reporting.²</p> <p>¹ Available at http://www.ecy.wa.gov/pubs/0603024.pdf. ² The exception is the Draft Permit for Kaiser, which contains a performance based limit. The Kaiser draft permit will be discussed in more detail below.</p>	<p>SR-2. Ecology believes the final permit will not cause or contribute to exceedences of applicable receiving water quality standards. See responses to comments SR-1 and SR-3.</p> <p>SR-3. Ecology disagrees. Ecology has not ignored the PCB problem in either the proposed permit or final permit. As explained in response to comment SR-1, the permit includes a PCB limit on the inlet side of the black walnut shell (BWS) treatment system. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 3</p> <p>SR-4 Instead of effluent limits, the Draft Permits indicate that, "EPA rules (40 C.F.R. Subpart K (44 FR 32954-5)) do provide for the use of narrative limitations (BMPs) rather than numeric effluent limitations." Ecology's assertion is incorrect. The Fact Sheets appear to be referring to 40 C.F.R. § 122.4(k), which lists circumstances where BMPs may be used to control or abate the discharge of pollutants:</p> <ul style="list-style-type: none"> (1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) Authorized under section 402(p) of the CWA for the control of storm water discharges; (3) Numeric effluent limitations are infeasible; or (4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. <p><i>Id.</i></p> <p>SR-5 Ecology seems to misunderstand this provision. This provision is intended as a means to implement effluent limitations, which do not currently exist. Alternatively, Ecology must demonstrate that numeric limitations are infeasible. Ecology has not shown that numeric limits are infeasible, and stated at the public hearing that the narrative limits were meant to "buy time" for the Dischargers. Moreover, the Draft Permits do not explain what BMPs exist for PCBs other than monitoring. No BMPs are listed in the Draft Permits. Monitoring alone is insufficient to create a reduction in PCBs.</p> <p>SR-6 <u>Recommendation:</u> To be lawful, the Draft Permits must contain a date certain for achievement of the appropriate WQBELs for PCBs and those WQBELs must be included in all the Draft Permits. As the Environmental Groups explained at the public hearing, this would benefit each of the Dischargers because Ecology could then provide them with a compliance schedule. Without a compliance schedule, each of the Dischargers are open to Clean Water Act citizen enforcement actions, for discharging PCBs in violation of water quality standards.</p> <p>2. The Draft Permit Does Not Contain Clear Conditions Requiring Compliance with State Water Quality Standards.</p> <p>Pursuant to the Federal regulations implementing the NPDES program, permit issuers must determine whether a given point source discharge "causes, has the reasonable potential to cause, or contributes to" an exceedance of water quality standards. 40 C.F.R. § 122.44(d)(1)(ii). If a discharge is found to cause, have the reasonable potential to cause, or contribute to such an exceedance, the permit writer must calculate WQBELs for the certain criteria pollutants. 40 C.F.R. § 122.44(d)(1)(i), (iii)-(vi).</p>	<p>SR-4. The fact sheet references the correct cite for BMPs - 40 CFR Part 122.44(k), which is restated below:</p> <p>"In addition to the conditions established in section 122.43 (a), each NPDES permit shall include conditions meeting the following requirements when applicable...</p> <p>(k) Best Management practices (BMPs) to control or abate the discharge of pollutants when: ...</p> <p>(3) Numeric effluent limitations are infeasible; ..."</p> <p>SR-5. A plain read of the above provision would seem to allow BMPs to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. For this permit, Ecology has set a numeric limit for PCBs on the inlet side of the black walnut shell filtration system. This limit, ongoing efforts for PCB source identification and reduction (now specifically referenced in the final permit), and the new requirement that the Permittee participate in the Regional Toxics Task Force, will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River. These requirements take definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p> <p>SR-6. Ecology has not developed appropriate WQBELs for PCBs, so cannot place these in the final permit. Ecology relies on the TMDL process, which considers all sources of PCB pollution (background, point and nonpoint sources) to set the appropriate WQBELs.</p> <p>In the interim, the PCB limit, monitoring requirements, the ongoing efforts at PCB source identification and reduction, and participation in the Spokane River Toxics Task Force take the definitive first steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs.</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 4</p> <p>Similarly, in Washington, RCW 90.48.520 requires that: "In no event shall the discharge of toxicants be allowed that would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria." State NPDES and general permit regulations require permits, "whenever applicable," to include "limitations or requirements" necessary to "meet water quality standards." WAC 173-226-070(3) (a); WAC 173-220-130(1) (b) (i).</p> <p>The Washington Supreme Court, in <i>Port of Seattle v. Pollution Control Hearings Bd.</i>, 151 Wash.2d 568, 603 (Wa. 2004), explained this requirement as follows:</p> <p>NPDES permits may be issued only where the discharge in question will comply with State water quality standards. 33 U.S.C. § 1342(b)(1)(A) requires State-issued NPDES permits to comply with 33 U.S.C. § 1311. In turn, 33 U.S.C. § 1311(b)(1)(C) requires effluent limitations to comply with State water quality standards. In addition, 40 C.F.R. § 122.44 requires State-issued NPDES permits to contain conditions requiring compliance with State water quality standards. 40 C.F.R. § 122.44(d)(1).</p> <p>The Draft Permits fail to clearly establish conditions designed to ensure that discharges do not cause or contribute to violations of water quality standards. Not only is this problematic because it seriously calls into question the legal sufficiency of the Draft Permits, but it leaves the public uncertain as to whether the Draft Permits will adequately protect the chemical and biological integrity of the Spokane River. This deficiency is not cured by the Draft Fact Sheets' acknowledgement that permit conditions must ensure that discharges will meet established water quality standards because the information contained in the Fact Sheets are not enforceable terms of the Draft Permits.</p> <p>SR-7</p> <p>SR-8 <u>Recommendation:</u> The Draft Permits must be revised to include language that explicitly indicates the Discharger's obligations to ensure that discharges do not cause or contribute to violations of water quality standards, including an explicit reference to the duty to comply with 40 C.F.R. § 122.44(d)(1). This provision should be located near the beginning of special condition "S1. Discharge Limitations" in the Draft Permits, and/or wherever appropriate throughout the remainder of the Draft Permits.</p> <p>3. The Permits Lack Lawful Compliance Schedules.</p> <p>SR-9 The compliance schedule in the Draft Permits indicate that Dischargers will have to meet final QBELs for total phosphorus, CBOD, and ammonia ten (10) years after the permits effective date. The compliance schedule does not comply with Federal requirements for compliance schedules. Federal regulations require that any appropriate schedules of compliance "shall require compliance as soon as possible." 40 C.F.R. § 122.47(a)(1).</p> <p>The Clean Water Act defines compliance schedules as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition or standard." 33 U.S.C. § 1362(17); 40 C.F.R. §</p>	<p>SR-7. Ecology believes the permit includes all conditions necessary to protect receiving water quality standards, see response to comments SR-1 and SR-3.</p> <p>SR-8. Ecology in writing and managing the NPDES program in the State of Washington ensures that dischargers do not cause or contribute to violations of receiving water quality criteria. A discharger's obligation is to comply with the permit as written by Ecology; thus ensuring any permit provisions included per 40 CFR Part 122.44 are met.</p> <p>SR-9. The State's Water Quality Standards allows for schedules of compliance, see WAC 173-201A-510 (4). Compliance schedules "may in no case exceed ten years, and shall generally not exceed the term of any permit", WAC 173-201A-510 (4)(c).</p> <p>Similar to the Federal Rules which state schedules of compliance "shall require compliance as soon as possible", the State WQ Standards also specify that "schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the shortest practicable time", WAC 173-201A-510(4)(a). Ecology has set a 10 year compliance schedule considering the complexities of the dissolved oxygen problem in the Spokane River and the nature of the solution. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final QBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees will rely on 'delta elimination' to meet their final limits. The 'delta elimination' options may include an accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. With the uncertainties associated with the treatment technologies and delta elimination options, the Department believes the Permittee needs the 10 year compliance schedule specified in the final permit.</p>

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The Court upheld a district court decision finding that a cease and desist order that provided for a compliance schedule longer than the five-year life of the applicable NPDES permit could not be included in the permit because it purported to extend a compliance schedule beyond the term of the permit. 83 F.3d at 1120. The Court held that, “there is a five-year duration on the life of an NPDES permit that the ‘effective modification’ asserted here would violate.” <i>Id.</i> Similar to the compliance schedule at issue in <i>CBE v Unocal</i>, the ten year compliance schedule set forth in the Draft Permits attempt to extend the Draft Permits’ substantive requirements beyond the five-year limit established by the Clean Water Act. <i>Id.</i></p> <p>SR-11 Moreover, because Federal requirements for the content of State water regulations provide the statutory minimum, while State standards can only be more stringent, not less stringent, than Federal requirements, the Clean Water Act’s more restrictive five-year compliance schedule applies to the Draft Permits rather than Washington’s less restrictive ten-year compliance schedule. <i>See</i> 33 U.S.C. § 1370.</p> <p>SR-12 Finally, a review of the Draft Permits’ compliance schedules illustrates a significant amount of wiggle room in that they include delta elimination plans that are poorly defined and implicitly recognize that a trading program will be implemented, without specifying how permittees are to engage in such a program and how trades might or might not impact compliance with numeric permit limits.</p> <p>SR-13 <u>Recommendation:</u> Ecology’s duty here is to condition the Draft Permits so as to achieve compliance with the appropriate WQBELs for phosphorus and other parameters (PCBs, ammonia, CBOD) as soon as possible and in a manner consistent with both Federal and Ecology regulations. Ecology’s attempt to issue a schedule that extends compliance beyond the Draft Permits’ five-year fixed-term finds no support in the Clean Water Act, and provides a discharger with too much leeway. In order to ensure that the Draft Permits are consistent with the Clean Water Act and furthers the Act’s technology-forcing objectives, Ecology must require compliance with final WQBELs within five years of the Draft Permits effective dates.</p> <p>4. Antidegradation.</p> <p>Federal regulations require that Ecology’s “antidegradation policy and implementation methods shall, at a minimum, be consistent with the following: (1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and</p>	<p>SR-10. The State Water Quality Standards provide for compliance schedules for up to 10 years. Ecology believes State’s compliance schedule provisions are consistent with the applicable Federal Rule, see response to comment SR-9.</p> <p>SR-11. Again, the State Water Quality Standards provide for 10 year compliance schedules. Federal rules, in 40 CFR part 122.47, do not include a specific time limit, other than stating schedules should require compliance “as soon as possible”. The Department believes a the Permittee needs a 10 year compliance schedule for total phosphorus, CBOD, and ammonia due to the complexities of the Spokane River dissolved oxygen problem and the nature of the solution.</p> <p>SR-12. Ecology added language to clarify the delta elimination plan requirements in the final permit. Through TMDL implementation, the Spokane River DO TMDL Implementation Advisory Committee will further refine the details of delta elimination, including the accounting for bioavailable phosphorus, pollutant equivalency, water quality offsets, and water quality trading. Ecology expects to incorporate these refinements to the delta elimination plan at the five year permit cycle. At a minimum, determinations of compliance with numeric permit limits using delta elimination will not occur for a minimum of 10 years after permit issuance.</p> <p>SR-13. The permit requires compliance with the WQBELs for total phosphorus, CBOD, and ammonia consistent with both State and Federal regulations. Ecology has set a 10 year compliance schedule based the complexities of the Spokane River dissolved oxygen problem and the nature of the solution. See responses to comments SR-9 through SR-12, above.</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 6</p> <p>protected.” 40 C.F.R. § 131.12(a)(1). Only where the quality of waters exceed levels necessary to support the most sensitive biological beneficial uses is the State allowed to degrade water quality in order to accommodate important socioeconomic development. 40 C.F.R. § 131.12(a)(2). Even where these high quality waters exist, a situation present in this case for some pollutants and parameters, the regulations require that Ecology assures water quality adequate to protect existing uses fully. 40 C.F.R. § 131.12(a)(2).</p> <p>Although providing a very limited exception allowing some degradation in waters “[w]here the quality of waters exceed levels necessary to support” its beneficial uses, those exceptions do not apply to already degraded waters, such as the waters of the Spokane River because of excessive discharges of phosphorus, CBOD, and ammonia. 40 C.F.R. § 131.12(a)(2). In degraded waters, only the first mandate applies – to maintain and protect all existing uses, especially, for example, trout habitat. Accordingly, the regulations prohibit additional pollutant loads of phosphorus, ammonia, CBOD, and PCBs into the Spokane River.</p> <p>SR-14 <u>Recommendation:</u> Ecology <u>must</u> explain how it has addressed antidegradation in the Draft Permits.</p> <p>6. Permits must meet Spokane Tribe’s Water Quality Standards</p> <p>The Clean Water Act prohibits Ecology’s issuance of NPDES permits “when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.”³ The Draft Permits must therefore require compliance with both Washington and the Spokane Reservation’s downstream water quality standards because both are considered affected States. Thus, Ecology must consider the water quality standards of both jurisdictions in making permit decisions.⁴</p> <p>SR-15</p> <p>In addition, Federal regulations clearly and unambiguously require Ecology to include in these permits any conditions necessary to achieve the Spokane Tribe’s water quality standards, including limitations on all pollutants which Ecology determines will cause or have the reasonable potential to cause or contribute to an excursion above the Tribe’s water quality standards.⁵</p> <p>SR-16</p> <p>Any NPDES permit issued to a discharger in an upstream jurisdiction must include limitations necessary to comply with the water quality standards of a downstream jurisdiction. <i>Arkansas v. Oklahoma</i>, 503 U.S. 91, 107 (1992); <i>see also Montana v. United States E.P.A.</i>, 941 F. Supp. 945 (D. Mont. 1996); <i>City of Albuquerque v. Browner</i>, 97 F.3d 415 (10th Cir. 1996). Unfortunately, the Draft Permits provide <u>no</u> discussion or analysis of compliance with the Spokane Tribe’s water quality standards. It is clear from historical data for PCBs and phosphorous at a minimum that the Tribe’s water quality standards are not being met. As illustrated below, data from the Tribe indicates alarming low levels of dissolved oxygen at</p> <p>SR-17</p> <p>³ 40 C.F.R. § 122.4 (d). ⁴ It is the height of hypocrisy for Ecology to require the Idaho dischargers to meet Washington’s downstream water quality standards, but not also require Washington dischargers to meet downstream Tribal water quality standards. ⁵ 40 C.F.R. § 122.44(d).</p>	<p>SR-14. As stated in WAC 173-201A-300, the purpose of the State’s antidegradation policy is to:</p> <ul style="list-style-type: none"> •Restore and maintain the highest possible quality of the surface waters of Washington. •Describe situations under which water quality may be lowered from its current condition. •Apply to human activities that are likely to have an impact on the water quality of surface water. •Ensure that all human activities likely to contribute to a lowering of water quality, at a minimum, apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). •Apply three Tiers of protection (described below) for surface waters of the state. <p>Tier I ensures existing and designated uses are maintained and protected and applies to all waters and all sources of pollutions. Tier II ensures that waters of a higher quality than the criteria assigned are not degraded unless such lowering of water quality is necessary and in the overriding public interest. Tier II applies to new or expanded actions regulated by Ecology with measurable impacts to receiving water quality. Tier III prevents the degradation of waters formally listed as "outstanding resource waters," and applies to all sources of pollution.</p> <p>This facility must meet Tier I requirements described above. The permit protects and maintains beneficial uses through implementation of numeric and non-numeric permit limits that prevent additional loading of pollutants of concern (phosphorus, CBOD, ammonia, and total PCBs). The permit further takes appropriate and definitive steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for both dissolved oxygen and PCBs.</p> <p>SR-15. Ecology has considered the downstream Tribal water quality standards in developing and issuing this permit. See response to comment SR-18 below for a further explanation.</p> <p>-continued on next page-</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 6</p> <p>protected.” 40 C.F.R. § 131.12(a)(1). Only where the quality of waters exceed levels necessary to support the most sensitive biological beneficial uses is the State allowed to degrade water quality in order to accommodate important socioeconomic development. 40 C.F.R. § 131.12(a)(2). Even where these high quality waters exist, a situation present in this case for some pollutants and parameters, the regulations require that Ecology assures water quality adequate to protect existing uses fully. 40 C.F.R. § 131.12(a)(2).</p> <p>Although providing a very limited exception allowing some degradation in waters “[w]here the quality of waters exceed levels necessary to support” its beneficial uses, those exceptions do not apply to already degraded waters, such as the waters of the Spokane River because of excessive discharges of phosphorus, CBOD, and ammonia. 40 C.F.R. § 131.12(a)(2). In degraded waters, only the first mandate applies – to maintain and protect all existing uses, especially, for example, trout habitat. Accordingly, the regulations prohibit additional pollutant loads of phosphorus, ammonia, CBOD, and PCBs into the Spokane River.</p> <p>SR-14 <u>Recommendation:</u> Ecology <u>must</u> explain how it has addressed antidegradation in the Draft Permits.</p> <p>6. Permits must meet Spokane Tribe’s Water Quality Standards</p> <p>The Clean Water Act prohibits Ecology’s issuance of NPDES permits “when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.”³ The Draft Permits must therefore require compliance with both Washington and the Spokane Reservation’s downstream water quality standards because both are considered affected States. Thus, Ecology must consider the water quality standards of both jurisdictions in making permit decisions.⁴</p> <p>SR-15</p> <p>In addition, Federal regulations clearly and unambiguously require Ecology to include in these permits any conditions necessary to achieve the Spokane Tribe’s water quality standards, including limitations on all pollutants which Ecology determines will cause or have the reasonable potential to cause or contribute to an excursion above the Tribe’s water quality standards.⁵</p> <p>SR-16</p> <p>Any NPDES permit issued to a discharger in an upstream jurisdiction must include limitations necessary to comply with the water quality standards of a downstream jurisdiction. <i>Arkansas v. Oklahoma</i>, 503 U.S. 91, 107 (1992); <i>see also Montana v. United States E.P.A.</i>, 941 F. Supp. 945 (D. Mont. 1996); <i>City of Albuquerque v. Browner</i>, 97 F.3d 415 (10th Cir. 1996). Unfortunately, the Draft Permits provide <u>no</u> discussion or analysis of compliance with the Spokane Tribe’s water quality standards. It is clear from historical data for PCBs and phosphorous at a minimum that the Tribe’s water quality standards are not being met. As illustrated below, data from the Tribe indicates alarming low levels of dissolved oxygen at</p> <p>SR-17</p> <p>³ 40 C.F.R. § 122.4 (d). ⁴ It is the height of hypocrisy for Ecology to require the Idaho dischargers to meet Washington’s downstream water quality standards, but not also require Washington dischargers to meet downstream Tribal water quality standards. ⁵ 40 C.F.R. § 122.44(d).</p>	<p>-continued from previous page-</p> <p>SR-16. Ecology has determined that only PCBs in the discharge have the potential to contribute to violations of downstream Tribal water quality criteria. As explained in responses to SR-1 and SR-3, the final permit takes definitive steps to bring the Spokane River and Lake Spokane into compliance with the water quality standards for PCBs. The permit includes a PCB limit on the inlet side of the black walnut shell (BWS) treatment system. This limit, ongoing efforts for PCB source identification and reduction at the facility and participation in the Spokane River Regional Task Force will ensure the discharge will improve, not worsen, the PCB conditions in the Spokane River.</p> <p>SR-17. See responses to SR-14 and SR-16.</p>

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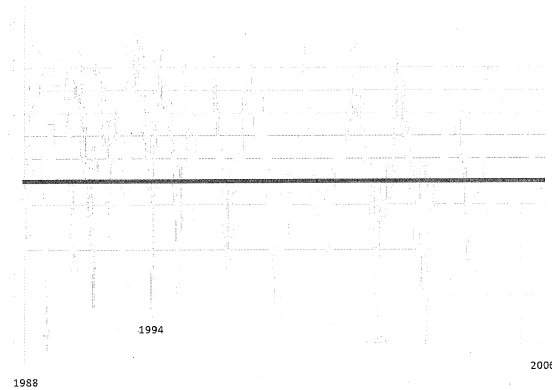
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Porcupine Bay on the lower Spokane River. These levels have dipped as low as 0.2 mg/L, significantly below the tribal standard of 8.0 mg/L.⁶

Ranges of DO concentrations at Porcupine Bay

note:



Source: Spokane Tribe

Moreover, as indicated by the draft PCB TMDL⁷, the Tribe's PCB standards are not being met. Drastic reductions in PCBs are required to meet these standards. Again, the draft PCB TMDL anticipated compliance with Tribal water quality standards:

A PCB loading scenario was proposed based on meeting the Spokane Tribe water criterion for PCBs (3.37 pg/l). The scenario requires a 95% PCB load reduction at the Idaho border, a 97% load reduction in the Little Spokane River, and ≥99% reductions in municipal, industrial, and stormwater discharges.

Draft PCB TMDL at 9.

SR-18

Recommendation: The Draft Permits lack any analysis of how the permitted discharge may cause or contribute to the DO and PCB problems on the Spokane Reservation. In fact, despite explicit analysis by Ecology indicating a need for significant reduction to meet the Tribe's PCB limits, the permits lack any PCB effluent limits. Legally, Ecology must analyze whether the

⁶ Tribal standards are available at <http://www.epa.gov/waterscience/standards/wqslibrary/tribes/spokane.pdf>.

⁷ Available at <http://www.ecy.wa.gov/pubs/0603024.pdf>.

note: The scanned figure is unreadable in this document. The original is readable, and shows the range of dissolved oxygen concentrations measured at Porcupine Bay during the years 1988 to 2006.

SR-18. Ecology has previously addressed how the Spokane River DO TMDL modeling affects downstream Tribal water quality (see the TMDL's Response to Comments, pages C-84 to C-86). In summary, the DO TMDL focused on DO problems in Lake Spokane, upstream of Long Lake Dam. Nonetheless, the implementation of the TMDL will improve water quality in the Spokane Arm of the river.

The Tribal Water Quality Standards do not fully define how dissolved oxygen criteria applies to waters of the Spokane Arm (e.g. treatment as a lake or river, and how natural conditions apply to this stretch). Further, model runs indicate that at the no source scenario (no anthropogenic sources of pollution) dissolved oxygen concentrations will decrease to as low as 1 mg/L in the bottom (stratified) portions of the Spokane Arm. It remains unknown if the TMDL improvements will meet Tribal water quality criteria.

For PCBs, the draft Spokane River PCB TMDL fully describes the analysis for meeting tribal water quality standards. Since this TMDL is still draft, Ecology will not place the proposed WLAs in this permit. In the interim, the permit controls PCBs through implementation of source identification and reduction efforts (now referenced in the final permit), and includes monitoring and a limit to control the levels of PCBs discharged from the facility. Along with the new permit condition requiring the Permittee's participation in the Spokane River Regional Toxics Task Force, Ecology believes these conditions are the appropriate and necessary first steps in bringing the Spokane River into compliance with PCB water quality criteria.

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<p>November 17, 2010 Draft NPDES Permit Comments Page 8</p> <p>SR-18 (con'd) Dischargers cause or contribute to a violation on the Spokane Reservation and include water quality-based effluent limits to ensure compliance with those standards.</p> <p>7. The Delta Elimination Plan is Poorly Defined and may not be Scientifically or Legally Defensible.</p> <p>SR-19 The Draft Permits include delta elimination plans which are not well defined. The plans are intended to allow the Dischargers to get credit for non-point source pollution reductions. In effect, the delta elimination plans establish a trading program, but they lack the requisite details necessary to allow the public to understand and provide input into trades.⁸</p> <p>SR-20 The Draft Permits do not specify how Dischargers will engage in such a program and how trades might or might not impact compliance with numeric permit limits. The Draft Permits appear to envision that delta elimination will be allowed to help Dischargers meet wasteload allocations, although no specifics are provided regarding exactly how this accounting will be done, and how permit compliance will be monitored. This poorly defined delta elimination plan provides no reasonable assurance that significant reductions of pollutant loading from non-point sources could ever be accomplished or whether the future effluent limitations will ultimately be met.</p> <p>SR-21 Beyond being poorly defined, it is questionable whether relying on delta elimination plans is scientifically or legally defensible. The Clean Water Act is silent on trading or delta eliminations. Washington law limits credits or offsets to the proportion of the non-point source reductions which occur beyond existing requirements. See WAC 173-201A-450. WAC 173-201A-450(1) provides, "A water quality offset occurs where a project proponent implements or finances the implementation of controls for point or non-point sources to reduce the levels of pollution for the purpose of creating sufficient assimilative capacity to allow <i>new or expanded discharges</i>." The regulation does not address offset for existing levels of discharge. Regardless, the regulation is clear that "[t]he improvements in water quality associated with creating water quality offsets for any proposed new or expanded actions <i>must be demonstrated to have occurred in advance</i> of the proposed action." <i>Id.</i> at 450(2)(b) (emphasis added). Accordingly, water quality offsets may be used for new and expanded discharges only <i>after</i> it is demonstrated that the improvements by the offset actions have occurred and are having the desired water quality benefits.</p> <p>SR-22 Unlike point sources, non-point source pollution is notoriously difficult to control. Its sources are myriad - such as urban runoff, forestry practices, agricultural practices including crop and animal feeding operations, and recreation, including boats and marinas - and enforcement is difficult. As a result, Ecology must focus first on addressing the largest controllable sources first (point sources) while working on preventive and curative non-point source actions.</p> <p>⁸ The Environmental Groups acknowledge participation in the Nutrient Trading Advisory Committee, but that process is in its infancy and should not be relied upon by Ecology or the Dischargers in lieu of meeting effluent limits.</p>	<p>SR-19. This permit lacks the details regarding the trading and offset plans because they haven't been developed yet. Ecology plans to develop a trading framework over the next several years. In addition, the Spokane River DO TMDL Implementation Advisory Committee may develop additional requirements for point to point and point to non-point trades and offsets. Ecology expects to include more detail regarding the trading and offset plans in subsequent permit renewals.</p> <p>SR-20. Again, Ecology expects the TMDL Implementation Advisory Committee will develop details on the accounting of pollutant credits and determining permit compliance. The compliance determination with permit limits will also depend on the nature of the trade/offset. For example, Ecology expects to modify both the TMDL and permit to include any bioavailability determinations that change permit limits. Ecology expects to better define delta elimination at the five year permit cycle, incorporating recommendations from the TMDL Implementation Advisory Committee.</p> <p>SR-21. Ecology expects that delta elimination will encompass more than just offsets as defined by the State Water Quality Standards. Delta elimination may include trading between pollutants, accounting for biologically un-available phosphorus, trading between facilities, etc. Delta elimination will include any measures that bridges the gap between what the Permittee will achieve with treatment technology and their final WQBELs.</p> <p>SR-22. Ecology believes this permit, as well as the other NPDES permits for Kaiser Aluminum, City of Spokane, and Liberty Lake Water and Sewer District, does focus control on total phosphorus, CBOD and ammonia discharged from these point sources.</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 9</p> <p>SR-23 <u>Recommendation:</u> Over-reliance on non-point source reduction as a potential offset or trade in a delta elimination plan could frustrate efforts to meet water quality standards. Ecology must make it clear that the Dischargers <i>must</i> achieve their permit limits in order to meet water quality standards, and should not rely on the uncertainty surrounding the proposed delta elimination program. The Draft Permits must reflect this reality.</p> <p>9. Additional Documents must be Available for Citizen Review.</p> <p>The Draft Permits call for the creation of additional documents, such as a technology selection protocol, engineering report, and offset plans. Ecology rules related to the administration of the NPDES program address public access to information, stating “the department shall make records relating to NPDES permits available to the public for inspection and copying.” WAC 173-220-080(1). Accordingly, it should be made clear that these documents will be available for public review.</p> <p>SR-24 10. Record Retention</p> <p>The Draft Permits require record retention for a minimum of three (3) years. In order to facilitate self-monitoring and agency/citizen review, records should be retained for five (5) years to correspond with Clean Water Act’s statute of limitations. 28 U.S.C. § 2462.</p> <p>SR-25 <u>Specific Comments on Individual Permits</u></p> <p><u>Liberty Lake Draft Permit</u></p> <p>1. Initial Interim Limits should be Established Based on Existing Performance.</p> <p>Liberty Lake’s draft permit should only allow increases in pollution discharges up to existing flow limits until pollution reduction measures are implemented. To avoid making water quality problems worse, Ecology must cap flows and pollutant discharge from the facility at existing performance until interim and final effluent limits can be met. These caps should be based upon actual performance and design flows.</p> <p><u>Recommendation:</u> The Liberty Lake draft permit should include a cap on flow based upon existing levels, as well as PCBs and all dissolved oxygen impacting pollutants. If the levels are allowed to increase, Ecology must explain how the increase is in keeping with its anti-degradation policy and anti-backsliding requirements.</p> <p><u>Kaiser</u></p> <p>1. The Kaiser Draft Permit’s Effluent Limitations Do Not Fulfill the Clean Water Act’s Technology Forcing Objectives.</p> <p>The ultimate goal of the Clean Water Act is the elimination of pollutant discharges. <i>See</i> 33 U.S.C. § 1251(a)(1). In light of this goal, “compliance with an effluent standard cannot fairly</p>	<p>SR-23. Ecology expects delta elimination will encompass more than just non-point to point trades or offsets. As explained earlier, delta elimination may also include trading between pollutants, accounting for biologically un-available phosphorus, trading between facilities, etc. For the Spokane River dischargers, implementation of treatment technology alone may not achieve the final WQBELs for ammonia, CBOD, or total phosphorus. In this case, the Permittees must rely on ‘delta elimination’ to meet their final WQBELs.</p> <p>Ecology believes the permit clearly states that the Permittee must meet these final WQBELs. With the uncertainty of what treatment technology may achieve, the permit retains the use of delta elimination to achieve compliance with the WQBELs.</p> <p>SR-24. Acknowledged. Ecology will make available to the public all submittals required by the permit. This will likely include posting to the Spokane River Forum website (spokaneriver.net), especially for important documents like the technology selection protocol, engineering report, and delta elimination plans.</p> <p>SR-25. Both State [WAC 173-220-210(2)(c)] and Federal [40 CFR 122.41(j)(2)] rules require the Permittee to keep records of monitoring activities and results for three years, unless extended due to unresolved litigation regarding the discharge of pollutants.</p> <p>Because both rules require the same recordkeeping requirements, Ecology has not lengthened the records retention requirement in the final permit.</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 10</p> <p>be viewed as the ultimate object of the statute.” <i>Natural Resources Defense Council, Inc. v. U.S. E.P.A.</i>, 822 F.2d 104, 123 (D.C. Cir. 1987). The Clean Water Act is therefore a technology forcing statute which continually requires dischargers to improve their water quality control. See <i>Entergy Corp. v. Riverkeeper, Inc.</i>, 129 S.Ct. 1498, 1515 (2009).</p> <p>SR-26 The Act’s technology-forcing objectives are only fulfilled if each iteration of an NPDES permit contains Technology Based Effluent Limitations (“TBELs”) that are sufficiently more stringent than the last, so as to force dischargers to implement technologies and practices that result in a net reduction in the discharge of pollutants. Not only does Kaiser’s Draft Permit contain effluent limits for certain pollutants that are no more stringent than those contained in Kaiser’s 1997 NPDES permit, but some of the effluent limits it establishes provide Kaiser with too much leeway and little incentive to continually upgrade and improve their pollution control technologies. Specifically, Kaiser’s Draft Permit’s TBELs for aluminum and chromium are identical to those contained in Kaiser’s 1997 permit. The Draft Fact Sheet’s suggestion, at pg. 10, that permit levels for chromium and aluminum should remain the same because Kaiser is able to meet this limit, is inconsistent with the Clean Water Act’s technology-forcing objectives.</p> <p>SR-27 Moreover, a review of the discharge monitoring reports (“DMRs”) submitted by Kaiser over the last five (5) years (during the critical period of March 1 to October 31) indicates that the TBELs for total suspended solids (“TSS”) and oil and grease are so high as to provide the facility with little to no incentive to improve its pollution reduction efforts. For example, while the Kaiser Draft Permit sets the limit for TSS at 709.4 lbs/day (average monthly) and 1,142.10 lbs/day (maximum daily), the DMRs suggest that Kaiser’s average monthly discharges rarely exceed 150 lbs/day and their maximum daily discharges rarely exceed 500 lbs/day. Similarly, while the Kaiser’s Draft Permit sets the limit for oil and grease at 655.1 lbs/day (average monthly) and 710.5 lbs/day (maximum daily), the DMRs suggest that Kaiser’s average monthly limits rarely approached 500 lbs/day. Because Kaiser’s actual discharges seldom approach the TBELs established in their draft permit, these limitations cannot possibly represent the best pollution control technologies or pollution practices. See EPA NPDES Permit Writer’s Manual 5.2.1.⁹</p> <p>SR-30 <u>Recommendation:</u> In order to fulfill the Clean Water Act’s technology forcing objectives, not only should <i>all</i> of the TBEL in Kaiser’s Draft Permit be more stringent than those contained in Kaiser’s 1997 permit (including aluminum and chromium), but those limits should be sufficiently stringent so as to incentivize improved pollution prevention measures. Ecology should explain how it calculated TBELs, and why it did not lower limits that Kaiser is easily meeting with existing technology.</p> <p>SR-31</p> <p>2. Specific Draft Permit Comments</p> <p>SR-32 Kaiser’s Draft Permit lacks a discussion of contaminated groundwater and possible discharge through direct hydraulic connection to the river. Moreover, to the extent Kaiser is</p> <p><small>⁹ Available at: http://www.epa.gov/npdes/pubs/pwm_2010.pdf</small></p>	<p>SR-26. The Clean Water Act directed EPA to develop standards of performance (effluent limitations) for industrial categories, which included the following:</p> <p>BPT - Best Practicable control Technology currently available - applicable to conventional pollutants - to be achieved by July 1, 1977;</p> <p>BCT - Best Conventional pollutant control Technology (BCT) - the level of treatment that succeeds BPT for conventional pollutants. The deadline for achieving BCT was July 1, 1984 but was changed in the 1987 CWA amendments to March 31, 1989</p> <p>BAT - Best Available Technology economically achievable - applicable to toxic pollutants. The deadline for achieving BAT was July 1, 1983 but was changed by the 1987 CWA amendments to March 31, 1989.</p> <p>Performance standards also include new source performance standards (NSPS) for new direct dischargers and pretreatment standards for existing indirect dischargers (PSES) and new indirect dischargers (PSNS).</p> <p>Others have characterized the Clean Water Act as a ‘technology forcing statute’ in that the Act mandated implementation of the above technologies for industrial discharges. However, Ecology has not interpreted these technology based requirements as meaning that ‘...each iteration of an NPDES permit contains Technology Based Effluent Limitations (“TBELs”) that are sufficiently more stringent than the last...’.</p> <p>SR-27. As discussed above, Ecology is not obligated to create more stringent effluent limits at each permit renewal.</p> <p>SR-28. Ecology calculated technology based limits for Kaiser Aluminum using BCT/BAT/NSPS standards. These EPA technology based limitations provide consistent effluent limits for like industrial categories. These limits create a level playing field on a regional, State, and National level.</p> <p>-continued on next page-</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 10</p> <p>be viewed as the ultimate object of the statute.” <i>Natural Resources Defense Council, Inc. v. U.S. E.P.A.</i>, 822 F.2d 104, 123 (D.C. Cir. 1987). The Clean Water Act is therefore a technology forcing statute which continually requires dischargers to improve their water quality control. <i>See Entergy Corp. v. Riverkeeper, Inc.</i>, 129 S.Ct. 1498, 1515 (2009).</p> <p>SR-26 The Act’s technology-forcing objectives are only fulfilled if each iteration of an NPDES permit contains Technology Based Effluent Limitations (“TBELs”) that are sufficiently more stringent than the last, so as to force dischargers to implement technologies and practices that result in a net reduction in the discharge of pollutants. Not only does Kaiser’s Draft Permit contain effluent limits for certain pollutants that are no more stringent than those contained in Kaiser’s 1997 NPDES permit, but some of the effluent limits it establishes provide Kaiser with too much leeway and little incentive to continually upgrade and improve their pollution control technologies. Specifically, Kaiser’s Draft Permit’s TBELs for aluminum and chromium are identical to those contained in Kaiser’s 1997 permit. The Draft Fact Sheet’s suggestion, at pg. 10, that permit levels for chromium and aluminum should remain the same because Kaiser is able to meet this limit, is inconsistent with the Clean Water Act’s technology-forcing objectives.</p> <p>SR-27</p> <p>SR-28</p> <p>SR-29</p> <p>SR-30 Moreover, a review of the discharge monitoring reports (“DMRs”) submitted by Kaiser over the last five (5) years (during the critical period of March 1 to October 31) indicates that the TBELs for total suspended solids (“TSS”) and oil and grease are so high as to provide the facility with little to no incentive to improve its pollution reduction efforts. For example, while the Kaiser Draft Permit sets the limit for TSS at 709.4 lbs/day (average monthly) and 1,142.10 lbs/day (maximum daily), the DMRs suggest that Kaiser’s average monthly discharges rarely exceed 150 lbs/day and their maximum daily discharges rarely exceed 500 lbs/day. Similarly, while the Kaiser’s Draft Permit sets the limit for oil and grease at 655.1 lbs/day (average monthly) and 710.5 lbs/day (maximum daily), the DMRs suggest that Kaiser’s average monthly limits rarely approached 500 lbs/day. Because Kaiser’s actual discharges seldom approach the TBELs established in their draft permit, these limitations cannot possibly represent the best pollution control technologies or pollution practices. <i>See</i> EPA NPDES Permit Writer’s Manual 5.2.1.⁹</p> <p>SR-31 Recommendation: In order to fulfill the Clean Water Act’s technology forcing objectives, not only should <i>all</i> of the TBEL in Kaiser’s Draft Permit be more stringent than those contained in Kaiser’s 1997 permit (including aluminum and chromium), but those limits should be sufficiently stringent so as to incentivize improved pollution prevention measures. Ecology should explain how it calculated TBELs, and why it did not lower limits that Kaiser is easily meeting with existing technology.</p> <p>2. Specific Draft Permit Comments</p> <p>SR-32 Kaiser’s Draft Permit lacks a discussion of contaminated groundwater and possible discharge through direct hydraulic connection to the river. Moreover, to the extent Kaiser is</p> <p><small>⁹ Available at: http://www.epa.gov/npdes/pubs/pwm_2010.pdf</small></p>	<p>-continued from previous page-</p> <p>SR-28 (con’d). Setting more stringent performance based limits provides an economic disadvantage to facilities which have invested to upgrade/install more advanced wastewater treatment technology compared with other like facilities which have not invested to upgrade their treatment facilities.</p> <p>In other words, setting more stringent limits than the federal technology based effluent guidelines punishes facilities performing well (those who have invested to improve treatment technology); and rewards those facilities performing poorly (those who have not invested to improve treatment technology).</p> <p>SR-29. See responses to comments SR-26 and SR-28.</p> <p>SR-30. See responses to comments SR-26 and SR-28.</p> <p>SR-31. The fact sheet explains how Ecology set the technology based limits in the permit. Again, Ecology is not obligated to create more stringent effluent limits at each permit renewal. See response to comments SR-26 and SR-28.</p> <p>SR-32. Ecology’s Toxic Cleanup Program currently oversees the remediation of contaminated groundwater at the facility. For more information, including detailed hydrogeologic conditions at the site, please refer to: http://www.ecy.wa.gov/programs/tcp/sites/Kaiser_trentwood/kaiser_tw_hp.html.</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 11</p> <p>SR-33 diluting its wastewater stream with cooling water, effluent limits must be applied to the wastewater <u>before contact with the cooling water</u>.</p> <p>SR-34 Section S2, Page 9-12: This section should make clear that monitoring of Total PCBs needs to occur before dilution with non-contact water.</p> <p>3. Draft Fact Sheet Comments</p> <p>SR-35 Page 4-5, Industrial Process: It is unclear why groundwater is being considered as wastewater. Please explain the basis for this. Dilution of effluent loads prior to discharge is implicitly prohibited by the requirement that permits contain mass load limitations for all pollutants except pollutants, which cannot appropriately be expressed by mass. 40 C.F.R. § 122.45(f)(1). Kaiser cannot use excess groundwater pumping to dilute its wastewater.</p> <p>SR-36 Page 5, Historic Releases/Clean-Up Activities: As stated above, excess groundwater cannot be used to dilute Kaiser's effluent. The use of cold groundwater appears to allow effluent to meet temperature criteria.</p> <p>SR-37 Page 8-11, Technology-Based Effluent Limitation: Kaiser's Draft Permit and Fact Sheet should quantify and characterize the "non-scope wastewater" described in this section to determine if AKART is being applied to the sources.</p> <p>SR-38 Did Ecology consider current performance, as opposed to just current permit limits, in setting the limits for chromium and aluminum?</p> <p>SR-39 Why was design flow, as opposed to actual flow, used for the BOD₅ and TSS loading described on page 11?</p> <p>SR-40 Page 16, Chart on Bottom of Page: There are two (2) "footnote a". In the second footnote a, the river at the Kaiser outfall is very different from conditions at the Stateline. Why was data from Stateline utilized?</p> <p>SR-41 Page 21, Total PCBs: Given the potential to cause or contribute to a water quality standard violation, Ecology cannot legally wait for a final PCB TMDL to give a PCB limit. Ecology must explain how this position is legal.</p> <p>SR-42 Page 21, Metals: End-of-the-pipe criteria is not sufficient for metals. If the river does not have the capacity to assimilate, Ecology cannot legally allow the discharge of metals, and Ecology must explain its rationale for including metals discharges.</p> <p>SR-43 Page 22, Toxic Pollutants: PCBs are not included in the toxic pollutants present in Kaiser's discharge; their draft permit only identifies aluminum and chromium as toxic pollutants present in Kaiser's discharge. This section needs to include PCBs.</p>	<p>SR-33. Ecology has set effluent limits for internal Outfalls 002 (industrial waste treatment), 003 (sanitary waste treatment), and 006 (black walnut shell filtration). Ecology based these limits on both meeting all known, available and reasonable methods of prevention, control, and treatment (AKART) for these treatment systems; and considering the dilution of these wastestreams with large volumes of groundwater and cooling water.</p> <p>SR-34. Kaiser measures PCBs at their final discharge point (Outfall 001). This outfall includes both process/non-contact cooling water (Outfall 006) and a ground water remediation flow. Kaiser uses an ultra low level analytical method that routinely detects PCBs at Outfall 001. This method provides reliable PCB results for the combined waste streams.</p> <p>SR-35. The NPDES permit program regulates the discharge of 'pollutants' into surface waters. This includes the pollutants present in ground water, in addition to those in process wastewaters and non-contact cooling waters.</p> <p>SR-36. Ecology considered the pollutant concentrations and discharge volumes of the final discharge (Outfall 001) in evaluating the reasonable potential for the effluent to exceed receiving water quality criteria. Outfall 001 does consists of process wastewater, contact and non contact cooling water, and ground water.</p> <p>SR-37. Ecology calculated a building block pollutant load for the 'non-scope' wastewaters based on a Federal Register publication (Vol. 53, No. 248, December 27, 1988). Ecology used the lime settling and filtration (LS&F) treatment effectiveness to calculate building block limits (Table 5 of the fact sheet), the highest level of treatment given in the Federal Register publication. Ecology considers these values as AKART for the non-scope wastewaters.</p> <p>SR-38. Ecology did considered the current performance of the treatment system in deciding to use the existing permit limits for chromium and aluminum at Outfall 006, rather than the higher technology-based effluent limits.</p> <p style="text-align: right;">-continued on next page-</p>

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<p>November 17, 2010 Draft NPDES Permit Comments Page 12</p> <p><u>City of Spokane</u></p> <p>1. Specific City Draft Permit Comments</p> <p>Page 7-9: The Draft Permit does not include final water quality-based effluent limitations (WQBELs) for phosphorus, CBOD, and ammonia as required by 40 C.F.R. § 122.44(d). The appropriate WQBELs for the pollutants which affect dissolved oxygen in receiving waters are identified in the DO TMDL.</p> <p>It is unclear whether these are the final or interim effluent limits for this facility. If this is the interim limit, the permit should clarify as such and provide the final effluent limitation.</p> <p>Page 7-9: The pH limit of 6-9 is inconsistent with the limit described in the Fact Sheet of 6.0-7.8. Fact Sheet at 27. This inconsistency should be remedied and explained.</p> <p>2. City Fact Sheet Comments</p> <p>Page 19, Consideration of Surface Water Quality-Based Limits for Numeric Criteria: It is unclear why the 7Q10 flow of 757 cfs referred to on this page does not match the 7Q10 flow used in the chart on the bottom of the page. What is the basis for this discrepancy?</p> <p>Page 19-20, Chart: There is a reference in the bottom cell on page 19 to "yr. 2004 Spokane." This reference is confusing. The model was calibrated with 2001 data, not 2004.</p> <p><u>Inland Empire Paper</u></p> <p>1. The Draft Permit's Effluent Limitations Do Not Fulfill the Clean Water Act's Technology Forcing Objectives.</p> <p>As explained above, the Clean Water Act is a technology forcing statute. <i>See Entergy Corp. v. Riverkeeper, Inc.</i>, 129 S.Ct. 1498, 1515 (2009). NPDES permits play an important role in forcing dischargers to improve their water quality control. During the renewal process, the permit should look to areas where progress has and should be made. Thus, the fact that IEP has complied with its current effluent limits does not mean that its effluent limits should remain stagnant.</p> <p>The IEP draft permit is deficient with regard to BOD and TSS for two reasons. First, the limits for BOD and TSS fail to create more stringent limits. For example, during the new proposed low flow season (March-October), the permit lists an average monthly limit for TSS of 4525 lbs/day, and a maximum daily limit for TSS of 8450 lbs/day. These limits are the same as the current permit's low flow season; a choice made "[b]ecause of the water quality concerns during the low flow season." IEP Factsheet at 21. This reasoning is counter-intuitive. If the concern is water quality, then more stringent limits must be set in order to force IEP to discharge less. Allowing the limits to remain stagnant does not force new technology controls to be implemented and does not improve water quality.</p>	

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Second, IEP's Discharge Monitoring Reports from March 2010 to January 2008 show that the mean Maximum Daily and Average Monthly discharges for BOD and TSS are far below their actual limits. There is no reason why the draft permit limits should be the same or *higher* than the current permit limits when IEP is not even discharging near its limits. If the goal is zero discharges, leaving so much leeway when not even necessary does not promote that goal. Further, the technology-forcing element of the CWA is ignored when IEP has no incentive to implement stricter controls. IEP's effluent limits should be based on the best available technology, not its actual discharges, but if a performance standard is utilized, Ecology should at a minimum recognize that IEP consistently discharges significantly less than its allowable limit, and reduce the limits accordingly.

Discharge Monitoring Reports for March 2010-January 2008 during *high* flow season months.¹⁰

Amount Discharged over		
Actual Limit	BOD (lbs/day)	TSS (lbs/day)
Average Monthly Mean	886	446
Average Monthly Limit	2820	4791
Maximum Daily Mean	1638	849
Maximum Daily Limit	5638	8938


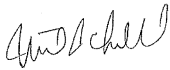
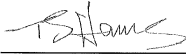

Discharge Monitoring Reports for March 2010-January 2008 during *low* flow season months.

Amount Discharged over		
Actual Limit	BOD (lbs/day)	TSS (lbs/day)
Average Monthly Mean	679	537
Average Monthly Limit	2374	4525
Maximum Daily Mean	1460	1311
Maximum Daily Limit	4536	8450

Recommendation: As evident in the tables above, IEP is discharging far below its effluent limits for several parameters. In their draft permit, during the high flow season (November-February), IEP is given an average daily TSS limit of 13,185 lbs/day. This is simply unnecessary when on average IEP only discharges 849 lbs/day. Even taking into a margin of safety, a limit of 13,185 lbs/day is far more than necessary and a new limit should be established reflecting IEP's technology capabilities and taking into consideration that Clean Water Act's technology-forcing requirements.

¹⁰ Discharge Monitoring Reports up to March 2010, are available online at <https://fortress.wa.gov/ecy/wp/dfsreports/>.

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<p>November 17, 2010 Draft NPDES Permit Comments Page 14</p> <p>2. Specific Inland Empire Paper Permit Comments:</p> <p>Section S1, Page 7-9: The permit lacks a pathogen effluent limit. Pulp and paper facilities are significant sources of pathogens.¹¹ The permit appears to lack any analysis of the potential for pathogen impacts to the river.</p> <p>The pH limit of 5 appears to be too low. The Kaiser permit calls for 6. What is the basis for the difference?</p> <p>Section S2, Page 10-11: The monitoring section should specify the methodology to be utilized for monitoring total phosphorus. Moreover, the permit should require monitoring of dioxins, pathogens, and endocrine disruptors associated with pulp and paper processes.</p> <p>Section S5, Page 16, Schedule of Compliance: Footnote f, the permit lists the final WQBELs based on the DO TMDL. However, these limits mistakenly appear to be the limits for Kaiser. The correct limits should be ammonia: 24.29; total phosphorus: 1.23; CBOD: 123.2. See DO TMDL at 34.</p> <p>3. Inland Empire Fact Sheet Comments</p> <p>Page 8: The narrative criteria paragraph refers the reader to several provisions of the WAC which no longer exists.</p> <p>The antidegradation paragraph refers the reader to WAC 173-201A-070 which no longer exists.</p> <p>Page 12, BOD5, Ammonia, and Total Phosphorous: The Fact Sheet states that interim limits for these three parameters are contained in the draft permit but only an interim limit for phosphorous is included. This omission needs to be remedied.</p> <p>Page 18, Toxic Pollutants: The permit does not address endocrine disrupters associated with this facility. Pulp and paper effluents has been linked with altered reproductive function in freshwater fish.¹² The stretch of river impacted by this facility is known wild trout habitat. Ecology should explain this omission.</p> <p><small>¹¹ See EPA, <u>Protocol for Developing Pathogen TMDLs</u> (2001) at 2-6, available at http://www.epa.gov/owow/tmdl/pathogen_all.pdf. ¹² See Jobling, <i>et al.</i>, <u>Endocrine Disruption in Wild Freshwater Fish</u>, <i>Pure Appl. Chem.</i>, Vol. 75, Nos. 11-12, pp. 2219-2234 (2003), available at http://www.iupac.org/publications/pac/2003/pdf/7511x2219.pdf.</small></p>	

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<p>November 17, 2010 Draft NPDES Permit Comments Page 15</p> <p>Conclusion</p> <p>As illustrated above, the Draft Permits have significant deficiencies that need to be addressed prior to issuance of the final permits. Moreover, in the event that significant changes are made to address these comments, comments of other parties, or as the result of changes to the TMDL that materially alter the permits, Spokane Riverkeeper, the Lands Council, the Kootenai Environmental Alliance, and the Gonzaga University Legal Assistance Environmental Law Clinic requests an opportunity to comment on those changes.</p> <p>Please do not hesitate to contact the undersigned if you have questions about these comments.</p> <p>Sincerely,</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;">  Bart Mihailovich Spokane Riverkeeper Clinic </div> <div style="text-align: center;">  Michael J. Chappell, Director Gonzaga Environmental Law </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 40px;"> <div style="text-align: center;">  Terry Harris Kootenai Environmental Alliance </div> <div style="text-align: center;">  Mike Petersen The Lands Council </div> </div>	<p>SR-44. Ecology has considered your comments and made changes to the permit as determined appropriate.</p> <p>SR-45. Ecology has made changes to the draft permit based on the comments received, and does not plan a second opportunity for public comment at this time.</p>